# NATIONALITY AND THE PEACE TREATIES

# NATIONALITY AND THE PEACE TREATIES

*by*

WILLIAM O'SULLIVAN MOLONY

*(Life Member of the League of Nations Society of Ireland)*
*Attached to the Political Section of the League of Nations, Geneva. (1921)*
*Overseas Secretary of the League of Nations Union, London. (1923)*
*Assistant Secretary-General of the International Federation of League of Nations Societies, Brussels. (1924–1925)*
*Member of the Minorities Section of the League of Nations Secretariat, Geneva. (1925–1931)*

LONDON
GEORGE ALLEN & UNWIN LTD
MUSEUM STREET

FIRST PUBLISHED IN 1934



PRINTED IN GREAT BRITAIN BY
UNWIN BROTHERS LTD., WOKING

DEDICATED TO

SIR WALTER NAPIER, D.C.L.

AND IN MEMORY OF

THE LATE MR. LUCIEN WOLF

INDEFATIGABLE IN THEIR

EFFORTS TO COMBAT

STATELESSNESS

# PREFACE

SOME six years ago I was asked by the then Director of the Minorities Section of the League of Nations Secretariat, Mr. Erik Colban (now Minister of Norway to France), to make a special study of the nationality problems arising out of the Minorities Treaties and Declarations. Having done this, I was tempted later on to extend my studies to the Treaties of Peace with a view to drawing comparisons between the nationality provisions of the Peace Treaties preceding and following the late World War.

The present work, technical to the extent that it deals in some detail with the nationality provisions of Treaties, Interstate Conventions, and State Laws and Decrees, purposes also to describe the material effect of the application or non-application of these provisions upon the populations of the European territories submitted to new frontier delimitations since 1918.

Such conclusions as are drawn in this work are of an entirely personal character. Although I have had some experience of nationality cases dealt with by the Committees of the Council of the League of Nations under its Minorities Procedure, I have been careful to avoid making reference to the Committee meetings which were of a strictly private nature.

I am particularly indebted to Sir Walter Napier of the Minorities Committee of the British League of Nations Union and to Professor Ruyssen, Secretary-General of the International Federation of League of Nations

Societies in Brussels, for the information which they have communicated to me as regards the activities of International Organizations; and also to Professor Kunz, of the Austrian League of Nations Society, from whose writings I have drawn much valuable material.

W. O'SULLIVAN MOLONY

RECOMMENDATIONS PASSED UNANIMOUSLY AT THE LAST CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW HELD AT THE HAGUE IN MARCH 1930

"That it is very desirable that States should in the exercise of their power of regulating questions of nationality, make every effort to reduce so far as possible cases of statelessness, and that the League of Nations should continue the work which it has already undertaken for the purpose of arriving at an international settlement of this important matter."

DECISION TAKEN BY THE COUNCIL OF THE LEAGUE OF NATIONS WITH REGARD TO THE ABOVE-MENTIONED RECOMMENDATIONS.

(June 1, 1930. Document A.6, 1930.)

"The Council notes the recommendations made by the Conference on the subject of nationality. It associates itself with the view expressed in these recommendations . . . that the League of Nations should, when the proper moment arrives, endeavour to make what further contribution it can towards the solution of the important and difficult problems of Statelessness and the different conflicts which arise from the possession by an individual of two or more nationalities."

N.B.—The subject has not yet been raised in the Assembly of the League of Nations (March 1934).

# CONTENTS

## PART I



## PART II

# PART ONE

## CHAPTER I

## ORIGIN OF THE CONCEPTION OF NATIONALITY AND ITS RESULTS

THE term nationality has both an ethnic and a legal sense. In the French language, unless specifically referred to from the standpoint of International Private Law, nationality means race, and implies the existence of some racial bond of unity between peoples that may be scattered, whose independent political entity is not necessarily recognized. In the English language the meaning of the term under International Private Law is almost always implied—that is, the status of membership of a nation, synonymous with State citizenship.

Treated ethnically, the origin of the consciousness of the possession of nationality must be traced to the dim ages. It is in fact impossible to attempt to ascertain at what time that feeling came to life. In remote times, before it became usual for conquerors to set out on a large scale of colonization, and before trade as we know it today was first conceived, family sentiment was not limited to immediate blood relationship, but to tribes and clans, communities of persons who clung to and moved together. The members of these communities were beyond doubt deeply conscious of their common nationality in its ethnical sense. It is highly improbable, however, that anything in the nature of a "national" feeling existed, seeing that the frontiers of these wandering tribes were continually changing and embracing, moreover, com-

munities of different races similarly placed. In ancient China, for instance, strong ethnical communities existed, ruled, and were overcome by others, which at that time knew no national bonds, but which, until recently, have so far united as to have come to be termed Chinese—a term implying the existence of a Chinese nationality embracing Mongol and Manchu alike. The development of this ethnic consciousness of nationality can easily be traced in innumerable instances through the pages of the world's history. Without reverting to the annals of mankind's infancy, we need only turn to the Rumanians, to the Jews of Salonika, to the Arabs of Java and Sumatra, the families of New England, Virginia, and the French Canadians, to convince us of the power underlying the consciousness of an ethnic nationality bound up with territories long forsaken and abandoned. But with the disintegration of the clan system, the demobilization of the conquerors' armies, the development of trade and the pressure of persecution, whatever vestiges of national ties may previously have existed have passed away, leaving an ethnical bond behind them, but creating entirely new spheres of national allegiance. Proud as the Rumanian may be of his ethnic Roman nationality, he is today a Rumanian and not a Roman. The Jews of Salonika no longer pay allegiance to the Moorish or Catholic Kings of Spain, although they yet speak the Spanish language of Cervantes in its original purity. The Arabs of the Malay Archipelago owe no allegiance to Hedjaz or Jemen other than to the Holy Places, in the same sense as some Americans might still venerate the Blarney Stone and others Anne Hathaway's cottage.

Yet it should not be forgotten that the existence of that ethnic consciousness of nationality, despite the above illustrations, has been almost solely responsible for the creation of States such as we know them to-day, particularly in Europe. Underlying nearly all the great ethnic nationality movements in history is to be found the ideal of the creation of an independent national political unity, and that ethnic force has in fact been the main instrument in securing such independence. The altered face of Europe following the late World War illustrates this forcibly. Thus, whilst not directly entering into the sphere of this work which relates to the international private legal aspect of this term, the ethnical nationality conception lies continually on the horizon and must not be lost sight of.

The origin of the conception of nationality in its legal and political sense is very much more recent than the ethnical conception. It is possible, in fact, to set an approximate date to its earliest appearance in anything like concrete form. Setting aside ancient Egypt in which a certain degree of national sentiment may have been known, the first real evidence of its existence was under the Roman Empire. Greece, being rather a Federation of States than an Empire governed from one centre and by one race, cannot be considered as having known the sentiment to anything like the degree that we feel it today. Under the Roman Empire, however, the nationality feeling became a reality for the first time in history, and most of the principles governing the acquisition of nationality today must be traced to the laws of the Romans. With the fall of the Empire, however, and the advent of the so-called Dark Ages that followed, the nationality conception

declined, and in fact all but disappeared from the earth's face. From this one might be led to conclude that national sentiment is to be found only in the highest state of civilization, and that where culture flourished the nationality conception flourished also. This is doubtless true amongst the European peoples, but in the case of Asiatics it is not so. No one will deny that the Arab culture of the Moorish kingdoms of Spain approached the highest that the world has ever known. And yet it would be impossible to say that the Spanish Arabs were ever conscious of a really national sentiment. Ferdinand and Isabella, in fact, owed their success almost wholly to the absence of the sentiment amongst their Moslem adversaries and to the growth of Spanish national sentiment in the Catholic armies.

Christian Europe during the Middle Ages, whilst drawing perhaps the greater portion of its culture through the Moors of Spain—excepting always the mystic development of the Christian Church—succeeded slowly, in spite of innumerable obstacles connected with the Feudal system, in reviving that all but lost heritage of the Romans, national consciousness. The recovery of this sentiment from the ruins of the world's greatest Empire was necessarily a slow process, especially where the Church as an international body tended to paint the face of Europe with the same brush, governing the lives of Teuton, Celt, Gaul, Magyar, Lombard, with a similar code of principles, inspiring them with the same ideals and presenting to them a common purpose. Furthermore, the conspicuous role played by baronial power in political affairs, and the comparative non-existence of a bourgeoisie, far from

fostered the maintenance of any fixed frontiers such as are essential to the development of a national conception. Yet in spite of these formidable obstacles, the seeds of the revival, as with almost all the features of the Renaissance, were sown in the Middle Ages. We note even during the progress of the Crusades a continual strengthening of the lines of demarcation between the knights of England, Scotland, Ireland, France, Germany, Austria, etc. Whilst Saladin had no national consciousness (he could hardly have considered himself as a Kurdish national), it would be more difficult to conclude the same in Cœur de Lion's case, although it would obviously be absurd to suppose that that great King's national sentiments were at all similar to those felt by English leaders today. Next to Ireland and to Scotland, where the ethnic nationality conception bordered closely upon the "national," France perhaps developed more rapidly than any State in Mediaeval Europe what might be termed national consciousness. The French nation today is particularly indebted to Joan of Arc in this respect. That wonderful saint and woman, in her inspiration, conceived a united France, a sacred French territory, of which Burgundians, Savoyards, Gascons alike were linked together by national bonds. The English were denounced by her as foreign usurpers. Subsequent events were of such a kind as to compel one ruling house after another to accommodate their policy according to this revived conception of nationality.

Thus it came about that men learnt slowly first of all to accustom themselves to the idea of nationality and then to venerate it.

The growth of trade and increase of travel followed closely upon the heels of the idea, with the inevitable result that certain principles came to be recognized for determining the conditions under which nationality was acquired or lost. Papers of identification came to be issued, in which the home, parentage, and so forth of travellers were inscribed. Furthermore, those travellers journeyed henceforward under the peculiar protection of their respective nations; if molested, the Ambassadors of their nation complained. We find some evidence of this in Cellini's memoirs. The possession of nationality brought with it several advantages. If this had not been recognized at the outset, the ideal of Joan of Arc would doubtless have been burnt with her.

The foremost of these advantages was doubtless diplomatic protection abroad. With the growth of trade and the increased tendency to travel, the need of such protection made itself more and more apparent.

It is not easy to judge even approximately when the practice of issuing national passports first came into existence, but there is good reason to believe that travellers and traders in the 16th and 17th centuries generally bore with them letters of protection, proving their nationality and establishing the motives of their journey, etc. For trading and banking purposes, the necessity of holding such papers as a safety-measure against fraud and impostors was rapidly felt. Furthermore, in times when war was of frequent occurrence and the trade routes continually menaced, methods were resorted to whereby trade carried on by neutrals could be protected. Neutral ships were thus in the 17th century protected on the high

seas by particular letters establishing the nationality of their owners, and this protection generally applied to the crews and passengers. During that century provisions were even laid down in Treaties relating to such letters of protection and passports.

The precise relationship between the bearing of a passport and the possession of nationality in the past is difficult to define. It is certain that during the lengthy periods between the 19th century and the late World War no passport was required of a person travelling to establish his nationality before the foreign authorities. It would seem that a simple declaration was sufficient. Moreover, until comparatively recently, in the general run of things, persons were not often met with travelling who were regarded as being open to suspicion on this score—a British traveller, for instance, usually betrayed his British nationality in his speech, manner, and prejudices, similarly the American, Frenchman, German, etc. The Russians alone were required through the whole of the latter course of the 19th century to bear passports, the cause of this being, no doubt, the preventive measures of a severe order taken by the Russian police against anarchism and socialism; *i.e.*, a means not so much of establishing nationality as of ascertaining the internal political views of the bearer and controlling them. A Russian of strong Socialist inclinations could not secure a passport, and if he wished to leave the country was forced to do so clandestinely, whilst passports were taken from those possessing them abroad, in cases where they were suspected, with the result of exile and consequently statelessness for all practical purposes.

During the French Revolution a severe passport system was introduced on the other hand to denationalize the nobility, and exclude from French territory those who had been fortunate enough to escape the guillotine. There is plenty of evidence, in fact, that until the late War the major number of occasions on which the bearing of passports by their nationals was made compulsory by States were those in which attempts were made to facilitate the work of the police and of the State authorities in preventing internal revolutions or counter-revolutions.

It might be concluded, therefore, with some reason that the 19th century witnessed a decline in the conception of nationality as associated with the passport, and an increase in the conception of passport possession as a police measure calculated to prevent the free movement of anarchists.

With the advent of the World War the importance of the passport as evidence of the possession of nationality became paramount. At the present time the possession of a passport is not only necessary for purposes of ordinary travel, but is an essential factor in the normal operation of man's life and existence. In some respects it might even be said that a person without a passport is like a leper—a "thing" living but "untouchable" and beyond the pale of this world. Setting aside the rank and file of crooks, accustomed to living on the extreme fringes of human society and reaping either the gains or woes of that unnatural situation, the non-possession of a passport, synonymous today with the non-possession of nationality, may lead to most tragic results, especially in pension cases and old age.

But if the possession of a passport is essential today, the possession of nationality is even more so. Persons tied to their own land and not dependent in any way upon travel may do without a passport, but in present-day conditions they cannot live without a nationality.

To many it would seem incredible that there should be in this present modern age persons of respectable and peaceful character who are deprived even of this meanest of human rights, namely, the possession of nationality. It would seem impossible that after the many centuries in which the legal machinery has progressed and the Law of Nations correspondingly extended, there should be people in Europe, for instance, who are buffeted about eternally from one State to another and who cannot remain more than a few days at a time in any given country. Yet such cases do exist, and they run indeed into many thousands, as this book will try to explain.

To those who have learnt to venerate the National Idea—and the greater part of the peoples of the world do so—it comes as a shock that such emotions should not be felt and enjoyed by everyone. We have today, thanks largely to Joan of Arc, developed such an extraordinary degree of national sentiment that a person without nationality, if we were to meet him, would strike us as being a very undesirable person and as someone to be shunned and mistrusted. Even the ethnic nationality feelings that such a man might put forward would lose their appeal in our eyes if we learnt that he possessed no recognized national status. Political agitators deprived of nationality may in many respects have earned the world's sympathy; they doubtless have and always will, as long

as their hopes in our eyes are well founded. But we doubt whether the peaceful, innocent kind of *Staatlose* would meet with much support anywhere. The only chance for such a person, it would seem, would be to cease to be innocent, to intrigue to secure the support of patrons who appreciate his ideas. Some of the greatest men in the world have been stateless at one time or another, but as political agitators thay have been stateless willingly, and have laboured to secure the creation of a State to which they could feel national allegiance. Clearly, it is not of these persons that we write, but of those several hundred thousand who, through no desire or fault of their own, have been deprived of one nationality without securing another.

As to whether the development of the nationality conception since the Middle Ages to its present role of paramount importance has been beneficial to the human race is not a question that we intend to answer. We know this only—that much blood has been spilt in the sacred name of nationality and that the veneration of the world's peoples for the National Idea has come about inevitably. We know also that the nationality conception for so long dormant in the East is beginning to manifest itself in increasingly forcible terms. Whilst a small élite of persons speak of Pan Europa, and the Third International works for a Communistic paradise, nationality movements of a very real nature are on foot in the various quarters of the globe. It may be that the sentiment, whilst growing in Asia, is losing ground in Europe, but we doubt it. The Peace Treaties following the late World War, instead of modifying national passions, have, if anything, accentuated

them, and the legal possession of nationality has become essential to a degree perhaps never known before in the history of the world. It will be seen from this work, furthermore, that the number of people deprived of national rights is today greater than at any time during the past hundred years.

## CHAPTER II

## THE FUNDAMENTAL CAUSES OF STATELESSNESS AND OF DOUBLE, CONTESTED, OR DOUBTFUL NATIONALITY IN GENERAL

IF we are agreed that it is right and normal for the peoples of the world today to possess national status legally, and to enjoy the rights as also the obligations accruing to the same, we must surely agree also that the situation of persons whose nationality is not definitely established is in general unenviable. There are exceptional cases—political agitators who may win our sympathy and international crooks whose destiny is commonly determined by their own free will, but of these groups this work does not purpose to treat.

It is the situation of the uninitiated that concerns us here—of those hundred thousands who ask nothing more than to be law-abiding and enjoy the same rights as those enjoyed by their neighbours, and who, through Peace Treaties, Interstate Conventions, National Laws and Decrees, find themselves placed, through no fault of their own, in a position very often less happy than that of the slaves of the past.

Napoleon was the first man of our era, or at least within range of it, who seriously inoculated, directly or indirectly, the sense of the legal importance of nationality into the peoples of Europe. Although supremely conscious of the pre-eminence of France and of the French people, he, nevertheless, took particular pains to give life to certain

ethnic national movements in Poland, the Italian States, Egypt, etc., which have left their mark firmly today on the atlas of modern Europe and Africa. But in protracting his campaigns, he was not slow to realize that the alterations of frontiers that he purposed would involve large movements of populations from the administrative point of view, from one suzerainty to another. In consequence, he took precautionary measures and introduced into several Conventions special provisions regarding nationality which were calculated to avoid statelessness or doubtful nationality arising in anything like serious proportions. The chaos left in Europe on his overthrowal at Waterloo accentuated to a hitherto unprecedented degree the importance of treaty provisions regarding nationality. Most of Napoleon's schemes had been shattered with that great battle, and it became necessary to reconstruct the old national forces that he had one by one overturned. Thus, for instance, whilst the peoples of England had their national integrity secured, those of Poland, for example, were deprived of their short-lived freedom and returned once more to the administration of Imperial Russia. It is natural that with this complete reversal of a French foreign policy, based, theoretically at all events, upon the ideal of liberating oppressed races, the subsequent return of the Russian Governors to Warsaw and of the Austrian to Cracow compelled a large number of Polish nationalists to seek refuge abroad. Legally speaking, such persons became virtually stateless, unless, through sympathy extended to them in view of their political activities, they were granted, for example, French nationality.

The nationality problems as between the Russian and Austrian Empires at this time must have been considerable, for we have evidence in the Russo-Austrian Treaty of 1815 not only of a provision setting the option period at six years (Art. 6), but of special delays laid down for re-option (Art. 14). But for the Belgo-Dutch Treaty of 1839 (Art. 19) and the Vienna Treaty of 1864 (Art. 19), we know of no instance in any Peace Treaties in which the option delay covers such a lengthy period of time or in which delays for re-option are provided for. With this striking illustration before us, it is only possible to conclude that even in 1815 every measure was taken to enable the populations of war-stricken territories to acquire a definite nationality and avoid the calamities accompanying statelessness. As to whether cases of contested or doubtful nationality often arose at this period we have no evidence, but the lengthy option delays and the right to re-opt would lead one to conclude *prima facie* that such cases were rare. Double nationality was never a very serious problem at that time, largely owing to the undeveloped travel relations, etc., between the States.

Today, on the other hand, the number of cases of double nationality the world over is considerable. And if we add to these the cases of statelessness, contested or doubtful nationality that confront us today, these might well run into several millions.

The fundamental causes of statelessness (*Staatlosigkeit*) and other defects in the settlement of nationality problems arise mainly in two ways: firstly, as a result of the defects of Treaty texts relating to cession, annexation, or re-acquisition of territories; secondly, as a result of the

different interpretations set to the principles governing acquisition or loss of nationality by the Municipal Laws of the different States.

With regard to Treaties, it should here be observed that on the whole in the texts that we have consulted, quite an unwarranted degree of carelessness has in general been shown as regards provisions relating to acquisition or loss of nationality. The populations of the territories ceded or annexed, one has the impression, have in the great majority of cases been treated by the Signatory States in terms of herded cattle, which has merely changed owners and was expected to comply to the new authority without murmur or right of representation. With the development of the general standards of education, these populations, known commonly today as Minorities, felt the sting of such treatment more and more, and as the sense of individuality increased, so also did the opposition of the populations to such treatment. Where no protracted opposition was shown, one can be certain that the national standards of culture of the population were low. This opposition led gradually to organization, and the organization of certain populations thus placed tended more and more to warn statesmen against inserting provisions in the Treaties that ruthlessly disposed of such populations in the cattle sense. Thus it came about that during the progress of the 19th century we note the introduction into the nationality provisions of the Treaties and Laws not only of all the principles underlying the acquisition and loss of nationality known to the Roman Empire, but of others derived from the late Middle Ages, and others from the slowly augmenting edifice of International Law. Between

1815 and 1918 we find the principles of Natural Allegiance, Domicile, Descent (*jus sanguinis*), Birth (*jus soli*), Rights of Citizenship (*indigénat, Heimatsrecht, pertinenza*), Option, Re-option, *ipso facto* acquisition and naturalization consistently represented. Some States favoured one or other combinations of these principles. The cruel but practical principle of *ipso facto* or automatic acquisition *en masse* was provided for alone, as far as we are aware, in three Treaties during that time: those relating to Alsace-Lorraine, New Mexico, and Pretoria. As a result of these three Treaties, cases of statelessness, etc., must have been very rare. The nationality of the populations was definitely established at one stroke, and although political suffering ensued, it was not occasioned by any failure in the Treaty text to provide for the acquisition of a definite nationality. It is where the Treaty provisions are either insufficient, or lack clearness, or where two principles collide and the precedence of one over the other cannot be determined, that the majority of cases of statelessness have arisen. The States concerned may thus contest nationality, or through lack of interest may accept the nationality as doubtful. If they have urgent need of military material they will generally contest, and, failing agreement, "confiscate." Woe to the man thus "confiscated" who should by chance fall into the opposite party's hands.

In the Balkan wars of the beginning of this century populations changed hands and nationality on several occasions to such an extent in fact that the Balkans to this day present nationality problems of the utmost complexity which no Treaties of Peace can adequately solve. There are thousands of people in the Balkans who may

in fact possess two or more nationalities or none whatever, due solely to the changes of frontiers effected during the Balkan wars. The extent to which statelessness, double nationality, etc., have arisen since the late World War is dealt with in detail further on in this work.

It is certain that the number of Treaties concluded hitherto fall very far short of precision and clarity in nationality matters, and that this great and common defect has been responsible for an important part of the big-scale nationality problems of Europe.

With regard to the Municipal Laws of the States, these are not covered by any uniform rules internationally codified, and both absent and double nationality may arise at any time, quite apart from the operation of Treaties relating to alterations of frontiers. These Municipal Laws are constantly coming into conflict with one another. Where birth (*jus soli*) invests an individual with the nationality of one State, origin (*jus sanguinis*) may invest him with another. Statelessness, however, would seem to occur less frequently than double nationality, through the different interpretations of Municipal Law. Where, however, the Treaties are lacking in clarity as regards the necessary conditions for the acquisition of nationality (which is commonly the case), and where Municipal Law is had recourse to by the State concerned, the difference of interpretation above referred to might readily lead to statelessness.

The fundamental causes of the defects of the nationality problem can be rarely traced to any faults committed by the persons affected. Sometimes, through ignorance, people may fail to opt for a nationality within the fixed

## CHAPTER III

## THE NATIONALITY PROBLEM TREATED FROM THE STANDPOINT OF INTERNATIONAL LAW

BOTH the existence of absent and double nationality are recognized by International Law. In other words, such cases of statelessness, double, contested, etc., nationality as arise cannot be remedied as yet through the application of the Law of Nations, seeing that no codified rules exist that can be internationally accepted or enforced. On the other hand, the very existence of these problems is recognized by eminent legal authorities on the subject as a blemish on Municipal Law as well as on the Law of Nations.

As regards stateless persons, their position *vis-à-vis* International Law might be summarized as follows: Stateless persons, i.e. (in most cases) persons who have lost their original nationality without acquiring another, are objects of International Law in so far as they fall under the territorial supremacy of States on whose territory they live. Since they do not possess a nationality, the link by which they could therefore benefit from International Law is missing. Thus they lack protection so far as this law is concerned. However much they may be maltreated, International Law cannot aid them. It cannot be considered maltreatment, for instance, if a State compels individuals deprived of nationality either to become nationalized or to leave the country. If the number of persons without nationality augments to a great extent in

a State, that State can require that they either apply for nationalization or leave the country. That State can even naturalize them under Municipal Law against their will, as no other State has a right to intervene. The above opinions are expressed by such authorities on the question as Roger Picard and Oppenheim. The latter writer expresses himself in the clearest possible terms as to the helpless position of International Law *vis-à-vis* stateless persons.

As for persons possessing double nationality, Oppenheim considers it more difficult to find means of redress against conflicts arising therefrom than those arising from statelessness or absent nationality. Double nationality may be acquired in several ways—for instance, by children at birth, by naturalization, as a result of marriage, through the legitimation of illegitimate children, by option, domicile abroad, and acceptance of foreign Government service. The occasion for conflicts arising between States is here very considerable, and has been of such gravity as to require the conclusion of special Interstate Treaties. It suffices to note here in this respect the Bancroft Treaties (1869, etc.) with the United States, the last of which was concluded with Portugal in 1908.

With respect to Treaties and cessions of territory and these being the cause of double nationality, International Law is apparently in the same position of powerlessness as in the case of absent nationality. No rules exist for meeting this problem in the Law of Nations. Unlike absent nationality, however, which is rarely the result of a person's purposed intention, double nationality is sometimes acquired deliberately and with beneficial results to

the possessor. It is not always necessarily a misfortune to possess two nationalities, especially where it is possible to avail oneself of the most and not the least convenient situation in a crisis. Yet viewed on the whole, it is safe to conclude that the possession of double nationality is in the greater number of cases a misfortune rather than an advantage.

To the above two forms of the nationality problem we should add those of contested and undesired nationality. We have not, however, discovered any direct reference to these forms in the works on International Law consulted. This may be because the former is held to be covered by the first two forms, and the latter to be beyond the sphere of International Law altogether. Cases of contested nationality have certainly arisen very frequently since the World War, and in a manner which leads generally to absent or to double nationality. The peculiar disadvantage of the position of a person whose nationality is contested by two or more States lies in the fact that the settlement of his case is always pending and many years might pass before agreement is reached, whereas if absent nationality were established, such a person would take steps to arrange for the acquisition of some nationality or other without delay. The possession of undesired nationality is much more frequent than supposed, especially since the late World War. Through incomplete Treaty provisions a whole category of people before the War and since, in the absence of an effective principle of domicile, have had to acquire the nationality, for instance, of the State in which they were born, which, generally involving, as this did, a drastic change of residence and removal to an area

with which there were no ties other than the circumstance of birth, have induced many to prefer to become stateless and to continue to retain their natural residence. One would think that from the standpoint of International Law, Treaties, and Conventions which ascribed an undesired nationality to an individual without giving him a reasonable opportunity to acquire the nationality most natural to his interests, are, in respect to such a case, defective. But if no codified rules exist in the Law of Nations for meeting these forms of the nationality problem, various theories have constantly been put forward by eminent international jurists which would certainly tend to diminish forcibly the number of unsettled cases.

In the first place, the principle that a man is at liberty to choose what nationality he pleases, and that a particular nationality cannot be forced upon him, is recognized by such authorities as Westlake, Field, Bonfils, Beccara, Calvo, and others. In the second place, the principle of automatic acquisition of nationality, with provision for right of option, in ceded or annexed territories is established by Alvarez (p. 281), although he would seem to go somewhat far in saying that this principle is "universellement reconnu en droit et suivi en pratique." To quote him: "Toute cession ou annexion entraîne immédiatement perte de la nationalité ancienne pour les habitants du térritoire cédé ou annexé et l'acquisition de la nationalité de l'annexant sauf le droit d'option." Fochernini (quoted by Kunz, p. 105) takes the same view, extending even such automatic acquisition to persons not necessarily domiciled in the territory annexed or ceded. Field's Code

No. 23 generally supports this principle, but extends the obligations of the annexing State to all those "which pertained to the former nation in respect of the territory acquired and its inhabitants and the property therein, but no others." Lord Phillimore (*International Law*, vol. i, p. 449) also supports the view of automatic acquisition, extending it to the population concerned in collective terms and in the sense of collective naturalization when he says: "A collective naturalization of all the inhabitants is affected when a country or province becomes incorporated in another country by conquest, cession, or free gift." It is clear, of course, that such collective naturalization would be an ungenerous if not a cruel measure without due provision being made as regards the rights of option, which Alvarez so happily includes in his opinion above referred to.

On the subject of option rights, all important in the settlement of nationality conflicts arising out of Peace Treaties, it would be hard to find a better authority to consult than Dr. Josef Kunz, of Vienna. His work, *Die Völkerrechtliche Option*, is full of interesting and most useful material for those interested in this very fundamental aspect of the nationality problem, and experts connected with the drafting of nationality clauses of Peace Treaties in the future would do well to consult him. The following conclusion reached by him on page 152 of his abovementioned work would, if generally accepted and codified under International Law, tend to a considerable degree to liquidate nationality conflicts arising out of the application of Peace Treaties, Interstate Conventions, and National Laws and Decrees: "A man failing to opt in the delay

prescribed is regarded as if option had not existed. The general rule, to which the right of option forms an exception, is then applied. He becomes definitely a member of the Successor State." In other words, if we interpret him rightly, the right of option constitutes an exception to a hard and fast rule whereby it is impossible for a person belonging to a ceded or annexed territory not to acquire *ipso facto* the nationality of the State to which that territory is ceded, or by which it is annexed. This may be a false interpretation, for the right of option under Peace Treaties has almost always, if not on every occasion, been granted to such persons only as had acquired the nationality of the annexing State *ipso facto* through a particular Treaty provision beset with limitations. On the other hand, if we accept the principle of collective acquisition in such circumstances, without reservations, Dr. Kunz's opinion continues to supply a concrete remedy for an otherwise highly complicated situation. As will be seen further on in this work, the fact that a person opts for a nationality other than that which he has possessed up to the time of the option, releases him, in the view of the State whose nationality he possessed up to that moment, from allegiance to that State, even if he failed through such option to acquire the nationality of the State for which he opted. Such a person would, in these terms, lose his former nationality without acquiring another. Dr. Kunz seems to me to have tried to find a remedy for such cases.

At all events, if International Law in its present form contains no rules that can meet and overcome these various categories of the nationality problem, we have

ample evidence of a more than ordinary effort made by prominent authorities on the Law of Nations to combat the altogether unreasonable and unnatural situations that have arisen, now arise, and will arise with respect to the provisions of Peace Treaties, etc., and the conflicts between the Municipal Laws of the different States, regarding nationality.

The conferences held by the International Law Association, notably at Venice, and of such competent bodies, prior to the World War, prove in themselves the existence of a general feeling that measures should be taken to outlaw abnormal situations which should by justice, and in accordance with the rights of man, be rendered as rare and inconspicuous as possible. The World War has certainly hastened the need for a thorough investigation of this all-important problem. The complexities of the nationality question have since 1918 augmented at least tenfold, and, in the circumstances, concerted action is today called for in this respect to a degree unknown in the previous history of the world.

## CHAPTER IV

## TREATMENT OF THE NATIONALITY QUESTION UNDER THE TREATIES OF PEACE, INTERSTATE CONVENTIONS, ETC., PRIOR TO THE CLOSE OF THE WORLD WAR IN 1918. PRINCIPLES APPLIED

WE do not consider it necessary to deal in this chapter with the nationality provisions of Treaties, Conventions, etc., concluded prior to the 19th century.

The principle of Natural Allegiance, intimately linked up, as it was, with the Feudal System, fell rapidly into disuse with the dawn of what might be termed the "democratic era" and the general spread of Republican ideas. After the French Revolution it might be said with comparative safety that this principle has never seriously figured in Treaty provisions. The Treaties concluded during the 19th century and up to the close of the World War suffice, therefore, as general material for the student of the nationality problems that confront us today.

It would be a mistake, however, to suppose that the principle of Natural Allegiance has not, at least in the Municipal Laws of certain States, survived the passage of time from the Middle Ages to the present day. If not specifically made applicable in the Treaties of Peace of the past hundred years, this principle stands out in striking relief in the Nationality Laws of the German Empire prior to the World War, and of the British Empire today. Its existence is somewhat mystic in sense; but owing to its very mysticism it is a factor of essential importance

where the national and hereditary sentiments of the law-givers are concerned. The possession of British nationality, for instance, was and is regarded under the Law of Great Britain as a privilege of which not only persons born outside His Majesty's realms, but whose fathers were born outside the same, if such nationality was naturally possessed, could not be deprived. Even where persons, resident outside the country to which they owed Natural Allegiance, acquired through necessity the nationality of the State to which they had transferred themselves, Natural Allegiance to their State of origin was often expected of them from that State.[1]

In the Peace Treaties of the past hundred years a combination of the two principles of Domicile and Descent would appear to be the most usual basis on which the problems of nationality were to be solved, and more especially during the course of the fifty years preceding the World War. At least seven Treaties of note apply these two principles.[2]

The principle of Domicile only has also been exceptionally favoured, and there are some authorities who in fact contend that it has, with but few exceptions of importance, swallowed up the theory of Descent and all the matters of comity. It is perhaps more correct to say

[1] Note especially cases of Germans prior to the World War who had acquired United States citizenship, but who often still continued, in the view of the German Government, to owe allegiance to Germany.

[2] Franco-German regarding Savoie, March 24, 1860; Vienna, 1864; Russo-American regarding Alaska, 1867; Franco-Prussian (for Germany both principles, for France Descent only), 1871; Cession of Thessaly, 1881; Constantinople, 1897; Russo-Japanese, 1905; Constantinople, 1913.

that Domicile has been at least habitually applied as a subsidiary principle where it fails to apply alone; also that where the principle of Descent has been introduced it has been done without affecting that of Domicile. It is interesting to note that the Treaty of Brest-Litovsk between Germany and the newly created Federation of Soviet Republics, which shortly preceded the close of the World War, provides for the principle of Domicile only.

The principle of Descent, applied by itself, has certainly been applied in rare and exceptional cases, and is, as far as we are aware, to be found in two Treaties only, to both of which Great Britain was a party.[1] It might be hazardous to suggest a close connexion here between the principle of Descent and the mystic principle of Natural Allegiance, championed perhaps more by Great Britain than any other nation, but we venture to do so.

The principle of Birth has almost always figured in Peace Treaties as an alternative criterion for the determination of nationality. We know of no instance in which it has been made applicable alone.

The principle of Birth, however, coupled with that of Domicile, has figured in several treaties. Kunz, whose opinion deserves to carry weight, considers this to be the combination most favourable to the populations involved. As for the mixed principle of Birth and Descent, this has generally been adopted by Great Britain and the United States.

The principle of Rights of Citizenship (*indigénat*,

[1] Anglo-German Treaty regarding Heligoland and Zanzibar, July 1, 1891, Article 12, paragraph 2; Franco-British Treaty of April 8, 1904, Article 7.

*pertinenza, Heimatsrecht*) was almost unknown to the Peace Treaty provisions of the century preceding the World War. The Vienna Treaty of 1865 regarding the Danish *indigénatrecht* constitutes, we believe, a single case. Its prominence in the Treaties respecting the Successor States of the ex-Austro-Hungarian Empire, concluded after the World War, must therefore command special attention. We have for this reason devoted a particular chapter to the origin and application of this principle, which constituted an exceptionally important and peculiar factor in the Municipal Laws of the ex-Austro-Hungarian Empire, but which was otherwise almost wholly foreign to the Municipal Laws of other States, and certainly foreign to the nationality provisions of earlier Peace Treaties.

The principle of the Right of Option has, as a general rule, figured with prominence in the Treaties of Peace. Unlike the other above-mentioned principles, however, its application, or rather interpretation, when applied, has been made the subject of a considerable amount of controversy, especially where failure to opt within the specified time-limit is concerned. Whereas in certain Treaties persons failing to opt remain nationals of the Successor State, and by opting re-secure their old nationality[1] (thus changing nationality twice), in other Treaties, by failing to opt, they become nationals of the Successor State, and by opting merely retain their original nationality[2] (thus changing nationality only once).

[1] Berne, 1862; San Stefano, 1878, Article 21; Constantinople, 1879, Article 7; Constantinople, 1913, Article 7; Athens, 1913, Article 4.

[2] Vienna, 1864–66; Alaska, 1867; Frankfort, 1871; Chile, 1884.

Without considering in detail the views put forward by Kunz and others, whereby nationality is acquired *ipso jure* through State Succession with a retroactive effect upon option, it would seem that the following view may perhaps be accepted as leading in general to the most satisfactory results, namely, that: a man failing to opt in the period set down is regarded as if no option in his case had existed; the general rule to which the right of option forms an exception is then applied; he definitely becomes a member of the Successor State. In this connexion reference should here be made to the Guadaloupe-Hydalgo (1848) and Spanish-American (1898) Treaties, according to which persons remaining in the ceded territories in question, without having declared their intention to retain the character of Mexicans and Spaniards respectively, were considered to have elected to become citizens of the United States.

As regards option delays, all important in the treatment of nationality problems under Peace Treaties, these have been fixed at different periods. As a general practice the period has been one year. In the Belgo-Dutch Treaty of 1839 a period of two years was set, and in the Alaska Treaty of 1867, as also in the Balkan States Treaties in general, we find a period of three years most favoured. The shortest known period was that of six months, in the Anglo-French Agreement regarding the New Hebrides, and the longest that of six years, in the Russo-Austrian Treaty of 1815 (Art. 6) and the Vienna Treaty of 1864 (Art. 19).

Delays for re-option have also been known to figure in Peace Treaties, as, for instance, in the Russo-Austrian

Treaty of 1815 (Art. 14) and the Belgo-Dutch Treaty of 1839 (Art. 19).

To the above-mentioned principles should be added that of *ipso facto* acquisition *en masse* in cases of cession or subjugation of territories, or where through annexation populations collectively are considered as automatically belonging to the appropriating State.[1] This principle, if combined with that of the Right of Option, although drastic, certainly renders the arising of cases of statelessness almost impossible. But it is clear that its application, especially where no provision is made for the right of option, often sows a seed of discontent which in time may grow into dimensions of considerable political importance, as, for example, in the case of Alsace-Lorraine after the 1870–71 war.

The application of the principle of Naturalization, as far as the Treaties of Peace are concerned, has arisen mainly where the provisions of such Treaties have, through their inadequateness, necessitated the promulgation of national laws or decrees regulating nationality along lines of naturalization. Seeing that the Law of Nations does not at present comprise any rules concerning naturalization, and that such naturalization is left to the discretion of the State concerned, which may in consequence lay down any conditions it pleases when granting the same, the need for such Naturalization Laws in the winding-up of a post-War situation must be regarded as a

[1] Arnim telegram, October 1, 1872, *re* Alsace-Lorraine; New Mexico Treaty, 1846, where the whole population was taken over by the United States; as also was the case with the Boers under the Treaty of Pretoria, May 31, 1902.

defect arising out of defective Peace Treaties. There is evidence that this measure, so obviously less favourable to the persons concerned than *ipso facto* acquisition of nationality, has been fairly often resorted to in connexion with Peace Treaty issues.

The principle of Redintegration, or Resumption, where the original nationality may be resumed without option being exercised, has, we believe, scarcely, if ever, figured in Peace Treaty provisions.

In concluding this chapter, it should be noted that Treaties in general have not expressly laid down the conditions under which nationality is lost, but have concentrated rather on conditions whereby it is acquired or retained.

## CHAPTER V

## GENERAL CONCLUSIONS REGARDING PART I

THE preceding chapters have thrown but a scanty light on the nationality problem as it confronted us prior to the close of the World War. They must serve as a sketch only of the growth of the conception of nationality, of the position of that conception *vis-à-vis* International Law, and of its treatment under the Peace Treaties and National Municipal Laws prior to 1918.

But this sketch suffices to establish certain facts of great importance when we come to consider the problem as it faces us today in the light of the application of the Treaties of Peace following the World War.

First and foremost is the fact that special nationality provisions have been included in almost all the Peace Treaties during and since the 19th century, and that the ground upon which those who drafted the Peace Treaties of today worked was therefore quite familiar, and had been well traversed for over a century. Thus, it cannot be argued that no machinery existed at the close of the World War which could render complete the nationality provisions of the Peace Treaties, and which could prevent statelessness and other defective forms of the nationality problem from arising.

In the second place, we find that on the one hand the principle of Domicile was almost always strongly favoured, being recognized as the most natural and least offensive criterion upon which claims to nationality could be based,

and on the other hand that the principle of Rights of Citizenship was almost entirely unknown to the earlier Peace Treaties. It cannot, therefore, be argued that an extensive use of the principle of Domicile in the Treaties of Peace after 1918 would be out of accord with the previous procedure most favoured, nor can it be argued that the principle of Rights of Citizenship was ever seriously recognized as a criterion for the establishing of nationality.

Furthermore, although it is true that no codification of rules governing the acquisition or loss of nationality under International Law was achieved, opinions of value expressed by eminent authorities were not wanting, and the tendency to favour certain principles and to reject others as obsolete or injurious made itself gradually more and more apparent. In other words, material was not lacking to render discrimination possible between the practicable and impracticable Treaty provisions.

If we add to this the continually increasing evidence of the existence of statelessness, double nationality, and so forth, arising out of the defects of previous Treaties and out of the conflicts between the Municipal Laws of the States, we could only suppose that particular pains would have been taken to learn from such past experience, and avoid at all costs an extension of an obvious evil.

It now remains to be seen to what extent those who drafted the Peace Treaties of today have utilized this evidence, and in what measure the nationality provisions of the Treaties since 1918 have proved effective.

# PART TWO

## CHAPTER I

# ADVENT OF THE PRINCIPLES OF THE SELF-DETERMINATION OF PEOPLES AND OF THE RIGHTS OF MAN

*President Wilson's Fourteen Points—The Versailles Negotiations—The American Conception of the Self-Determination of Peoples and the French Conception of the Rights of Man (Droits de l'Homme)—The British View—Withdrawal of the United States—France and Great Britain*

THE World War, after four desperate years of fighting such as humanity had never witnessed, had at last come to an end. The wearisome and dangerous business of demobilizing some fifty million fighting men was steadily proceeding. The armies of Von Hindenburg and Mackensen had effected their amazing retreats. The spirit of revolution was in the air. In an atmosphere heavy with strain and fever the political architects of the victorious Powers were building up the Treaties—the Treaties of Peace which were to restore law and order in the tumult of a broken Europe.

In the territories covered by the Austro-Hungarian Empire alone more than fifty million people waited and wondered. They knew that unparalleled frontier changes would take place, but only very few could imagine to what State they would henceforward owe allegiance. And the internal revolutions intensified their uncertainty. Most of them had, however, heard of the great Peace-

maker, of the Woodrow Wilson of the Fourteen Points, of the arch-advocate of the mysterious but mellifluous principle of the Self-Determination of Peoples. He was at least a man amongst men, not just a politician, but the Leader of a Nation which had welcomed many of their kin which stood for Justice and not only Liberty. They respected him and they respected also the mighty army that supported him.

One would imagine that no mortal in the world's history, with Napoleon perhaps excepted, was ever made the object of so many pairs of anxious eyes as was the President of the United States in those expectant days.

But whilst in the eyes of some there shone a vision of hope, the eyes of others portrayed marked signs of uneasiness. Perhaps the majority of these, in Central Europe at least, were officials and their families, men who had devoted many years of their life to administrating the vast and varied territories of the Austro-Hungarian Empire. These officials, small and great, numbering well over one hundred thousand, might be left to face starvation if adequate provision were not made for the extension of their services and for the final reward of pensions payment. Comparatively few would have foretold that they might become stateless, passportless, and thus find themselves in the saddest and meanest of social grades to which man can today descend. If they did not all share the majority's rejoicings at the advent of the principle of Self-determination of Peoples, they must have felt, nevertheless, that they would not be forgotten altogether and that the Treaty provisions would deal justly with them.

To those people who were in fact to be largely faced with statelessness were added many more in time—those fleeing to Europe for safety from Soviet Russia and from Kemalist Turkey. They were to grow to over a million—to give a rough estimate of the stateless in Europe in 1923.

As for the number of persons to be invested with two nationalities, who were to acquire undesired nationality, or whose nationality was to be contested, these would necessarily have to run into several millions, as this work will attempt to explain.

We have seen in Part I that the problems of absent and of double nationality have often arisen since the nationality conception became a decisive factor in the interrelationship of peoples, and have, furthermore, established that, in the absence of any uniform international code regulating the acquisition and loss of nationality, these problems are liable to arise at any moment. Of the two ways in which they commonly arise, namely, through defective Treaties and Conventions or Laws promulgated in pursuance of these and through different interpretations of Municipal Law, the former is almost exclusively dealt with in this work, for the reason that by far the greater number of actual cases of absent, if not of double nationality, derive from the frontier changes and cessions of territory following the World War. These territorial alterations have in the main been confirmed by the Peace Treaties, although some, such as Upper Silesia, East Galicia, Teschen,

Klagenfurt, Memel, Vilna, have been confirmed either by special conventions based on plebiscites taken, or by decisions passed by such bodies as the Supreme Council, the Conference of Ambassadors, and the Council of the League of Nations. The area affected covers a considerable portion of Europe, and certainly the greater part of Central Europe and the whole of the Balkan States together with Turkey in Europe and Asia.[1]

The populations directly influenced by these changes of frontiers could not be estimated under one hundred millions. In consequence, the enormous dimensions reached by the nationality problem as a result of the World War can be fittingly calculated; in fact, it would be safe to state that in no period of the history of the world has the problem of nationality given greater cause for complexity.

As the War drew to a close and the victory of the Allies over the Central Powers came to be more and more certain, the picture of a stupendous series of frontier alterations and of changes in national status passed from the field of the theoretical into the practical. With the principle of Self-determination of Peoples on the fair road to realization, racial leaders who had hitherto confined their activities to speculative propaganda, set to work to tracing such frontier lines as they considered indispensable for the security and well-being of the hitherto "oppressed" peoples whom they represented. At the same time, these plans were not viewed in some

[1] This work does not deal with Mandated Territories.

quarters without anxiety, especially by the Central Powers, who, perhaps, had some reason to fear an extravagance of claims which, if realized, might deal a mortal blow to their own national existence. Above all, it was feared that an unnatural displacement of populations might occur which would cut off large bodies of people from their native countries.

In order to appease fears of this nature, declarations were made from time to time by the Allied statesmen, guaranteeing to secure that only such adjustments of frontiers would occur as would dispose of previous antagonisms and establish a more equitable distribution of populations than had existed prior to the War.

Notable amongst such declarations was the speech delivered by President Wilson on February 11, 1918, which expressly laid down the following principles that took final shape in the famous Fourteen Points and which served later as a basis for the Armistice concluded on November 11, 1918:

> (A). All well-defined national aspirations would be accorded the utmost satisfaction that could be given without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to disturb the peace of Europe and consequently of the world.
>
> (B). All the territorial settlements involved in the War were to be made in the interest and for the benefit of the populations concerned, and not as a part of any further adjustment or compromise of claims amongst rivals.

In other words, justice for both parties; recognition of the principles governing acquisition of nationality, right of self-determination and protection of minorities were to be guaranteed. These statements and others emanating from similarly responsible persons served to quieten to a considerable extent the anxiety felt in the quarters above-mentioned, and it might be said perhaps that they formed, in fact, a kind of *Lex Contractus* for the Peace that followed the Armistice to which due expression should be given in the Peace Treaties.

The spirit that governed the labours of the Treaty architects might be said to have been derived in the main from two distinct sources—the first, the American Declaration of Independence (1776) and the United States Constitution (in force 1789); the second, the French Declaration of the Rights of Man of August 27, 1789. These two declarations might also be said to have had a parentage in common, a parentage to which the French philosophers, Montesquieu, Voltaire, Rousseau, and the "Encyclopédistes" chiefly contributed, and a bond in common in the active presence of La Fayette. One might therefore have concluded, with good reason, that the atmosphere in which the Treaty construction was conducted was one of harmony and mutual inspiration, that one ideal prevailed amongst the Allied Powers, for Great Britain set no obstacles to the propagation of the American and French principles as long as her interests in the Orient were not tampered with.

It would seem surprising, therefore, that the colossal

structure which the Peace Treaties finally presented to the eyes of the world, and to which President Wilson had so eminently subscribed, should not have received the approval of the United States when submitted for ratification.

There is an explanation, however, for this unhappy move, and this explanation is to be found in the widely different conception of the Rights of Man as developed in France and the United States during the course of the 19th century. If the parentage of the two codes of principles, approved by both peoples in 1789, was the same, their offspring, due to wide differences of mentality, constitution, history, and political environment, were destined clearly to swing out upon markedly distinctive lines. The French conception of liberty was of a traditionally realistic mould, allowing for discrimination within the folds of equality and based upon talent and public utility; whereas the American might be described as being legislative, less discriminative, but more conservative in the English sense of the term. The Wilsonian theory of "making the world safe for democracy" could, for example, neither appeal to the precise and politico-practical French mind nor to the mind of the average United States citizen, whose sense of the realistic, up to the present at least, more usually than not begins and ends at home. If the peoples of the United States favour ideas and ideals, if they are inclined to cherish plans for the regeneration of the world and the improvement of society and culture, they are reluctant to put those ideals into practice—at all events in an official form—outside the borders of their own territory. The French, on the

other hand, profess to recognize no boundaries where the sixteen articles of their Declaration could be propagated with success. It is to see their dream realized far and wide in the lifetime of their civilization that spurs the French on in their vast international activities. The British realized their dream, but not on the Continent of Europe. The Germans have possessed and may still possess a dream of *Weltbeherrschung* based upon a high ideal, but their battle-cry could never stir the hearts of "oppressed" peoples to such warmth and ardour, to the same degree of noble endeavour which the swelling strains of the *Marseillaise* arouses and the cry of equality evokes in the hearts of sensitive races.

It is enough to study without prejudice the sixteen articles of the greatest declaration made by any nation to understand why France had necessarily to play the major practical role in the reconstruction of post-War Europe.

The mental isolation of President Wilson from the current sentiments of the peoples of the United States rendered, however, a personal link between him and the French advocates of the Rights of Man possible and productive. Thus many of the American President's ideas were accepted at Versailles and figured with prominence in the Treaty texts.

Notable amongst these was the Covenant of the League of Nations. This Covenant possesses a framework in many respects similar to that of the Constitution of the United States. Senate and Congress find their hypothetical counterparts in the League's Council and Assembly, whilst the Supreme Court of the United States is repre-

sented by the Permanent Court of Justice at The Hague. The political conception of the old American Federalists of 1781, and of the Philadelphia Convention of 1787, which may have been the source of Wilson's inspiration, might well have found the structure of the Covenant acceptable, with some modifications as regards the exercising of sanctions. But to the tenacious old Republican views which still form the conscious or unconscious basis of political thought, outside the Universities and other enlightened centres, the Covenant was the embodiment of all that tended towards intensified centralization, and this, together with the provisions for economic and armed sanctions to be taken against offending States, set a ban to any possibility of the Covenant being accepted by the majority of the United States citizens when the Peace Treaties were presented for ratification.

Much has been written on this subject, but for the purposes of this work it is sufficient to attempt to discover the cause of the prominence given to French political science in the drafting of the Covenant and Peace Treaty texts. Even the British, themselves Covenant promoters, shared with the Americans certain misgivings as to the construction that might be set later to the sanctions articles. At this very time, Disarmament before Security is an Anglo-American contention, whilst with France and the States that look to her for guidance or fear her as a neighbour the contention is precisely the reverse. But the French conception was destined to prevail at least in the Peace Treaty texts. Anyone familiar with the provisions of the Treaties of Versailles, St. Germain, Trianon, and Neuilly must be impressed by the firmness, detail, and

vision with which they were drafted—and even more so by the provisions of the so-called Minorities Treaties arising out of the Treaties of Peace. In these the influence of France is apparent and the principles of the Rights of Man prevail with the same restriction set to equality where the interest of public order call for the same. The Peace Treaty of Lausanne with Turkey of August 1924 clearly shows in its provisions where British political science predominates and where French discreetly withdraws into relative obscurity. Here the tacit agreement between Great Britain and France regarding the former's liberty of action in the Orient operates beyond question; the nationality clauses in themselves supply sufficient evidence of this, as this work will show.

Before proceeding with the examination of the nationality provisions of the Treaties, Interstate Conventions and State Laws deriving from these, it will be necessary first of all to cast an eye over the new face of Europe as it emerged after the Versailles negotiations had ended. When doing so it would be, in the light of the foregoing arguments tentatively submitted, wiser to take the view that the frontier changes affected were not so much due to the application of the Wilsonian doctrine of the Self-determination of Peoples as to the application of the French principles of the Rights of Man. The American President only contributed to what Clemenceau achieved.

## CHAPTER II

# THE FACE OF EUROPE AS A RESULT OF THE APPLICATION OF THE FRENCH AND WILSONIAN DOCTRINES

*The New Frontier Lines of Europe Territorial Losses of Germany, Austro-Hungary, Bulgaria, and Turkey—Nationality Changes Involved—Creation of the League of Nations—The Peace Treaties and the So-Called Minorities Treaties—The Principles of Self-Determination of Peoples, Rights of Man, Protection of Minorities—Their Codification and Position vis-à-vis International Law—Germany and the Protection of Minorities—The Nationality Clauses of the Treaties—The Passport—"Where is Bessarabia?"*

THE territorial losses of the Central Powers were varied in the extreme. Where in the cases of Germany and Bulgaria these were relative and foreseen, the frontier changes of Austro-Hungary and Turkey were immense, and are even today but seldom understood.

That Alsace-Lorraine should have passed over to France, Schleswig to Denmark, Posen to Poland, Eupen-Malmedy to Belgium, and the little Hultschin area to Czechoslovakia were practically foregone conclusions, and the loss of these territories could not have evoked much surprise in Germany. The greatest blow received by Germany was the separation of East Prussia from the Fatherland by the famous Dantzig corridor, whereby Poland acquired access to the Baltic Sea and Dantzig became a Free City placed under the protection of the

League of Nations. A further blow which she felt keenly was the loss to Poland of an important section of the Upper Silesian coal area by virtue of a decision of the Conference of Ambassadors (October 20, 1921). The rich coal basin of the Saar Valley still awaits the plebiscite prescribed for 1935, which she may or may not lose either to France or the League of Nations.

It might be estimated that Germany lost some five millions or more of her nationals through frontier changes —with those overseas excepted. Of these, some three millions became nationals of Poland, the Free City of Dantzig and Czechoslovakia, and were in consequence placed under the protection of the League of Nations to the extent provided for by the Treaties.

In the case of BULGARIA, the territories lost to Jugoslavia, whilst being of great strategic importance, are relatively small. They comprise three areas: the first to the north of Nish and towards the Danube; the second in the Pirot region, approximately in line with Sofia; the third in the south-western corner due north of Salonika. In the second area Bulgaria lost Tzaribod, the important railroad junction of the Orient Express, and the towns of Strezimirovic and Slivnica. In the third area, the Jugoslavs acquired from Bulgaria the town and valley of Strumnitsa, together with the protecting mountain ranges, thus securing their access to the Ægean in the direction of Salonika.

Bulgaria lost under the Treaty of Neuilly some 250,000 of her nationals.

The frontier changes submitted to by the Austro-Hungarian Empire are without precedent in the history of

the States of Europe. Only the total dismemberment of Poland in 1812 offers a plausible comparison to the vastness of the territories involved, and, in its economic results, a total dismemberment of territory would, as a rule, be preferable to a partial one, which so restrains the original centre as to choke it.

The territories of Austria and Hungary would, if united today, represent one-quarter only of the territories administered under the old dual crown. Bohemia, Slovakia, Moravia (with the towns of Pilsen, Prague, Brunn, Carlsbad, Marienbad), Silesia, and Subcarpatho-Russia (with the towns of Kasa and Munkacs) went to create the new Czechoslovak Republic and enrich it with world-famous watering-places. These territories included a population of close upon fourteen million people. The East Galician lowlands north-east of the Carpathians, and which had formerly reached the Russian frontier as far as Brody, passed into the hands of the newly created Polish Republic, together with the magnificent old Polish capital of Cracow and the war-stricken cities of Lemberg (Lwow), Prsemysl, and Tarnopol. The population lost to Poland in this area was enormous also, and reached the approximate figure of ten millions. The Trentino territory between Innsbruck and Udine, and eventually the Dalmatian coast up to Fiume (d'Annunzio's *coup de main*), together with some islands, were lost to Italy. In the Trentino alone some 200,000 people changed hands. To Jugoslavia were lost the territories of Slovenia, Croatia, and Bosnia-Herzegovina and the former Hungarian Banat and Baranyai. Old Serbia, thus transformed, almost tripled its original area with the vanished Montenegran

crown lands included. The population lost to Jugoslavia could be estimated at some ten millions. Rumania just about doubled its area, through the acquisition of the beautiful and much disputed Transylvanian lands, northern Bukovina with the city of Czernowitz, and Bessarabia. Rumania in the north today shares reasonably lengthy frontier lines with both Czechoslovakia and Poland, replacing those with Austro-Hungary and Russia.

Estimating the united populations of the present Austria and Hungary at twelve millions at the most, we find that the old Empire lost at least forty millions of its nationals to the Successor States and Italy.

It is not surprising, therefore, that these peoples should have awaited with feelings of anxiety the outcome of the Versailles negotiations embodied in the Treaties of St. Germain and Trianon, nor can it be wondered at that many should have seen their misgivings converted into despair at acquiring—if they were fortunate enough to do so where the possibility of statelessness arose—the nationality of a State to which they did not wish to owe allegiance.

TURKEY'S territorial losses were only determined in 1924. The Treaty of Sèvres of 1920, owing to the growth of Turkish nationalism, had foundered, carrying with it the already recognized "sovereign and independent State" of Armenia, as also the mapped out State of Kurdistan. When the Allied Powers faced Kemalist Turkey at Lausanne there were but few Armenians left in Turkey proper. Many had sought refuge in the neighbouring States with the defeat of the Greek Army in Asia Minor (September 1922).

The Kurdish movement had been suppressed. A drastic exchange of population—similar in some respects to the Greco-Bulgarian Exchange Convention provided for by the Treaty of Neuilly—led to the return to Turkey of some 325,000 Moslems from Greece, and to the return to Greece of almost one million and a half Greeks from Turkey, who had been established in Asia Minor for centuries. Thus, outside the Mandated Territories of Irak, Syria, and Palestine, Turkey must have lost at least one million and a half of her nationals. It was not, however, a loss which she greatly regretted. In European Territory she definitely lost Western Thrace to Greece. As a result of the Treaty, Turkey was left in the fortunate position of a State possessing tenable frontiers and a homogeneous population of over thirteen millions—at least where religion is concerned. Greece benefited little from the Lausanne Treaty—her prestige was seriously compromised, and she was faced with the problem of establishing settlements and providing work for over a million new nationals.

The frontier changes of the Russian Empire concern us in this book only where they affect Finland, Estonia, Latvia and Lithuania, Poland and Rumania. The first three States secured their total independence after stubborn military resistance; between them Russia lost some twelve millions of her nationals. The Polish-Lithuanian dispute which arose out of the occupation of Vilna by the Poles has not yet been entirely settled, at all events not in the opinion of the Lithuanians. For present purposes it is enough to assume that Vilna forms part of Poland, and to note that Memel, previously German, has become

Lithuanian. In this area Russia lost some five millions of her nationals. Poland, through the Treaty of Riga in 1921, re-acquired from Russia a vast stretch of territory inhabited by some ten million people, together with her present capital, Warsaw, and the towns of Lodz, Lublin, Bielostok, and Brest-Litovsk. The territorial position of Rumania *vis-à-vis* Soviet Russia is dealt with in Chapter VIII.[1]

The revival of Poland after a partition between Russia, Prussia, and Austro-Hungary of a hundred years duration —the creation of Czechoslovakia—and the territorial aggrandisement of Old Serbia, corresponded with the natural growth of the Pan-Slav movement during the course of the 19th century. This movement, as also the Pan-Turanian, had been dealt with academically by many Germans of note but could never receive any practical support from Germany, as long as Austro-Hungary was considered to be a necessary ally.[2] The Russians had pushed their Pan-Slav policy to its extreme by hastening to the assistance of Serbia in 1914, but their *bête noire*, the Poles and perhaps the Ukrainians also, prevented them from making their policy a consistent one. France alone could favour the movement with a clear conscience. Moreover, the principle of the Rights of Man could be safely applied

[1] The nationality provisions of the Peace Treaties concluded between the Baltic States and Poland and Soviet Russia are dealt with in Chapter VIII.

[2] Germany, with the retreat of the Serbian Army into Albania, had a singular opportunity of concluding peace with Serbia, and thus eventually with Russia. This would have led to some form of autonomy with Poland and Czechoslovakia. But she did not use the opportunity out of defence for her ally. See also Emil Ludwig's *Le Monde tel que je l'ai vu*, pp. 226–227.

in this case, especially seeing that such Polish, Czech, Slovak, Slovenian, and Croatian agitators as did not emigrate to the United States usually sought refuge in France. If the proclamation of Czechoslovakian independence was made at Pittsburg, U.S.A., the republican leaders were usually to be found in Paris. The same could be said of the Polish and other Slavonic leaders.

Here the triumph of French political science in Central Europe is shown at its best, and the moral support given by President Wilson in the name of the Slavs of the United States enabled the French principles to take practical shape in the Treaties of Peace.

The creation of the League of Nations, more essentially developed as a Britannico-American conception (it was foreseen in France by Henry IV, the Abbé St. Pierre and Leon Bourgeois), was contributed to at first with some reluctance by the French. Realists above all else, they hesitated to accept a form of International Jurisdiction to which their former enemies might eventually have extortionate recourse. With the introduction of the Sanctions Articles into the Covenant, however, their fears were sensibly appeased. The Covenant was permitted to figure as the preamble to the clauses of the Treaties of Peace. France went even further. Anyone who has examined the texts of the Minorities Treaties arising out of the Treaties of Peace must be impressed by the extreme liberality of spirit pervading their provisions. The Signatory States undertake to ensure full and complete protection of life and liberty to all their inhabitants with-

out distinction of birth, nationality, language, race, or religion; all inhabitants of the State shall be entitled to the free exercise, whether public or private, of any creed, religion, or belief, whose practices are not inconsistent with public order or public morals; all nationals of the State shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language, or religion; differences of religion, creed, or confession shall not prejudice any national of the State in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions, and honours, or the exercise of professions and industries; no restriction shall be imposed on the free use by any national of the State of any language in private intercourse, in commerce, in religion, in the Press, or in publications of any kind, or at public meetings; notwithstanding any establishment by the Government of an official language, adequate facilities shall be given to the nationals of the State of non-majority speech for the use of their language, either orally or in writing, before the courts; State nationals who belong to racial, religious, or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other State nationals—in particular they shall have an equal right to establish, manage, and control at their own expense charitable, religious, and social institutions, schools, and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

The articles containing the above provisions are to be recognized as fundamental laws by the Signatory State, and no law, regulation, or official action shall conflict

or interfere with these stipulations, nor shall any law, regulation, or official action prevail over them. Further articles regarding the public educational system, adequate facilities for instruction in minorities languages in primary schools and equitable share in the enjoyment and application of sums provided out of public funds under the State, certain religious communities and races such as the Jewish, etc., are included in the Minorities Treaties.

All these provisions, *including those relating to the acquisition of nationality*, with which this work deals, "so far as they affect persons belonging to racial, religious, or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations."

Here, in the very drafting—and the French text is still clearer than the English—can be discerned the direct application of the fundamental principles underlying the French Declaration of the Rights of Man.

The insertion of minorities clauses into the Peace Treaties with Germany, Austro-Hungary, Bulgaria, and Turkey,[1] and into the Minorities Treaties signed by Poland, Czechoslovakia, Jugoslavia, Rumania, and Greece, and later incorporated in or covered by the Minorities Declarations made by Estonia, Latvia, Lithuania, and Albania, constitute a landmark in history, respecting the problem of nationality from which all further develop-

[1] The articles of this Treaty regarding Turkish nationality are not placed under the League of Nations guarantee. (See Chapter III.)

ments in the treatment of nationality issues, from the standpoint of International Law, are likely to derive their main impetus in the future. The fact that the application of these clauses has been placed under the *League's guarantee* and declared to be of *international concern*, forms, if not the complete remedy sought by International Law for the problems of absent and double nationality, at least a progressive step of first-class importance towards the blending of the issues of the nationality question in general with the requirements of International Law. If only certain States have been called upon to undertake the obligations above mentioned,[1] the fact nevertheless remains that the principles underlined in the said minorities clauses have come to be almost universally recognized in theory as applicable internationally.

A resolution voted by the League's Third Assembly on the initiative of Professor Gilbert Murray, commits the States Members of the League to recognition, in principle at least, of the said minorities' rights in their respective territories (September 21, 1922). Thus, although it can on no account be said that the nationality provisions of the Minorities Treaties and Declarations—*which, it should be observed, refer by way of comparison to the majority populations also*—could be regarded as applicable under the Law of Nations to all the States of the world, *the fact that those minorities clauses exist, and that they constitute, in a sense, a codification of certain principles*

[1] Several of these States raised objections. Note M. Clemenceau's reply to M. Paderewski (*The League of Nations and Minorities*, p. 12, Information Section, League of Nations Secretariat, and Temperley's *History of the Peace Conference*, vol. v, p. 128).

*regarding the possession or acquisition of nationality, is a distinct sign of progression towards the general codification of such principles under International Law.*

For the purposes of this book it is sufficient to note that the obligations above referred to were only required by the Principal Allied and Associated Powers of those States, the remoulding or the aggrandizement of which involved a considerable alteration of the original European frontiers and, consequently, of an equally considerable redistribution of populations. The exceptions made in the cases of Alsace-Lorraine, Schleswig, and the Italian Tyrol, where important frontier changes took place without being accompanied formally by minorities obligations, undertaken by the acquiring and re-acquiring States, can perhaps be best explained inasmuch as the frontier lines in question, being traditionally claimed, were long known, thus offering fewer difficulties from the territorial point of view.

Why Germany was not formally bound over to undertake similar minorities obligations in her territory is clearly explained by the following note drawn from page 12 of the League's Secretariat's handbook on *The League of Nations and Minorities*:

> "In a memorandum submitted to the Peace Conference by the Polish Delegation, it was further pointed out that the Treaty of Versailles did not contain any provisions regarding the protection of minorities in Germany analogous to those which

Poland was required to accept for the protection of German minorities in Poland. In this connexion it may be mentioned that, in the German counter-proposals to the peace conditions, Germany, in the chapter concerning the League of Nations, asked for the protection of minorities in general, and in particular for the protection of German minorities in the ceded territories. Germany stated that, for her part, she was prepared to apply the same principles to the treatment of minorities within her own territory. In the Allies' reply, dated June 16, 1919, reference was made to the guarantees which were to be provided under the Minorities Treaties to German minorities in the ceded territories, and the Allied and Associated Powers took note of the declaration of the German Delegation, that Germany was prepared to apply the same principles to the treatment of minorities within her own territory."

Thus at the present time the only nationality clauses regarding the minorities in Germany that are placed under International guarantee are those contained in the Upper Silesian Convention of May 15, 1922, and relative to Poles in German Upper Silesia. Germany's obligations cease here, however, as from June 1937.

. . . . .

The nationality clauses of the Peace and Minorities Treaties refer to majority and minority populations alike. Some nationality clauses of the Peace Treaties and all those contained in the Minorities Treaties are placed under international guarantee, where the minorities

populations are concerned. These will therefore be treated in a special category in Chapter V, entitled, "The Nationality Provisions of the Minorities Treaties and Declarations."

With the Treaties, millions of men, women, and children were faced with the dawn of a new era. On opening the doors of their homes, they found that the names of the streets, public places, post-offices, banks, and even of their villages, cities, provinces, and counties had altered and were often scarcely readable. New flags and new uniforms greeted them—new policemen, new newspapers, cinemas, and theatres claimed their moments of leisure; a new bureaucratic system governed their activities, new Courts of Law disposed of their complaints. The measure of their lives was turned to new decrees, to the use of an unknown language. New frontier lines divided village from village and city from city. Rich ports, industrial areas, valleys, forests, and rivers were cut off, divided or placed under neutral regimes. Whole networks of railroads passed over from one State to another. Great lands were expropriated and distributed amongst small-holders. New universities, academies, colleges, and schools were opened.

But to benefit from all this energy, to reap any advantage from these changes, to be able to live in security and to feel that one might have the Law on one's side, it was essential first of all to possess a nationality, to have a legal status, to have a passport.[1]

[1] The question of passports is dealt with in Chapter XIII.

That is why the virtues of post-War Treaties must be estimated always to a large extent in proportion to their nationality issues. And it is not always the great Treaty-makers who possess the necessary knowledge of political and economic psychology and geography to ensure Treaties against violation, territories against aggression, or laws against infraction.

It is more than likely that the three great Allied Peace-makers at Versailles were but humbly acquainted with the areas in which the frontier changes were elaborated. If confronted with the question, "Where is Bessarabia?" is it not conceivable that a Lloyd George's thoughts would have rushed to the Red Sea, that a Wilson's would have waited for a God-given inspiration, and that a Clemenceau would have affirmed that it lay "somewhere near Rumania"?

## CHAPTER III

## THE NATIONALITY PROVISIONS OF THE PEACE TREATIES WITH GERMANY, AUSTRIA, HUNGARY, BULGARIA, AND TURKEY

WE have examined in Part I the different principles governing the acquisition of nationality applied under the Treaties prior to the close of the War in 1918, and have concluded that during the hundred years preceding that date a combination of the two principles of Domicile and Descent has been most usually favoured. It should be noted before beginning to examine the post-War Peace Treaties that the principle of *Descent* does not figure strictly speaking in any of their nationality provisions. The closest approach to the principle of Descent is to be found in the principle known today as that of *Qualified Birth*, in other words, the combined principles of Birth and Domicile, or Habitual Residence of *parents*. To what extent the principle of Habitual Residence of parents approaches that of Descent is not easy to determine, but it would seem *prima facie* that where drastic frontier changes are confronted, as is here the case, the two principles can have no features in common. If this conclusion is correct, it should at once be observed that the combination of principles most favoured hitherto by Great Britain and the United States—namely, Birth and Descent (see Part I, p. 44)—figure on no occasion in the Peace Treaties following the World War.

The principle of Domicile or Habitual Residence is applied under the *Versailles Treaty* (with Germany) in the following areas—Eupen-Malmédy: Germans becoming Belgians *ipso facto* if habitually resident there before August 1, 1914 (Art. 36). Alsace-Lorraine: Germans becoming French if they or their parents were habitually resident there before July 15, 1870, or through military service with the Allies during the War, but *not ipso facto* (Arts. 51, 53, 54, 62, and 79). Czechoslovakia: Germans becoming Czechoslovaks *ipso facto* if habitually resident there at the date of the coming into force of the Treaty (Art. 84). Poland: Germans becoming Poles *ipso facto* if habitually resident there prior to January 1, 1908 (Art. 91). Dantzig: Germans becoming Dantzig Free Citizens *ipso facto* if habitually resident there at the date of the coming into force of the Treaty (Art. 105). Schleswig: Germans becoming Danes *ipso facto* if habitually resident there before October 1, 1918 (Art. 112). Under the Treaties of *St. Germain* (with Austria) and *Trianon* (with Hungary) no Successor State nationality, and not even Italian, can be acquired *ipso facto* through habitual residence alone. The principle is applied under the *Neuilly Treaty* (with Bulgaria) in the following areas—Jugoslavia: Bulgarians becoming Jugoslavs *ipso facto* if resident there prior to January 1, 1913 (Art. 39). Greece: Bulgarians becoming Greeks *ipso facto* if habitually resident there prior to January 1, 1913 (Art. 44). Bulgarian nationality is acquired *ipso facto* through habitual residence at the date of the coming into force of the Treaty (Art. 51). (See Minorities Treaties, Chapter V.) Under the *Lausanne Treaty* the principle is applied in the following areas: Cyprus; Turks

becoming British *ipso facto* if habitually resident there on or before November 5, 1914 (Art. 21). Territory detached from Turkey; Turks acquiring the nationality of the States to which Turkish territory is transferred not *ipso facto*, but on the conditions laid down by the local laws (Art. 30).

The principle of the Rights of Citizenship—*indigénat* (*Heimatsrecht*, *pertinenza*) is not applied under the Versailles, Neuilly or Lausanne Treaties, but only under the Peace Treaties with Austria (St. Germain), and Hungary (Trianon). Under the *St. Germain Treaty* the principle is applied in the following areas—Successor States other than Austria: Austrians becoming nationals of Successor States *ipso facto* if possessing rights of citizenship (*heimatberechtigt*) there at the date of the coming into force of the Treaty (Art. 70). (Exceptions made in the case of Italy (Art. 71) and Czechoslovakia and Jugoslavia (Art. 76).) Italian Tyrol: Austrians becoming Italians *ipso facto* if *heimatberechtigt* there prior to May 24, 1915 (Art. 71). Czechoslovakia and Jugoslavia: Austrians becoming Czechoslovaks or Jugoslavs *ipso facto* if *heimatberechtigt* there before January 1, 1910 (Art. 76). (See Minorities Treaties, Chapter V.) General: Austrians acquiring Successor State nationality other than Italian (failing acceptance by Italy under Art. 72) *ipso facto* in the State in which they were previously *heimatberechtigt* outside the territory transferred to Italy (Art. 74). General: Austrians acquiring Successor State nationality other than Czechoslovak or Jugoslav (failing

acceptance by Czechoslovakia or Jugoslavia under Art. 76) *ipso facto* in the State in which they were previously *heimatberechtigt* outside the territories transferred to Czechoslovakia and Jugoslavia (Art. 77). Austrian nationality is acquired *ipso facto* if *heimatberechtigt* in Austria on the date of the coming into force of the Treaty (Art. 64). (See Minorities Treaties, Chapter V.)

Under the *Trianon Treaty* the principle is applied in the same varied forms as under the Treaty of St. Germain, only instead of "Austrian" we read "Hungarian." Thus Article 61, Trianon, finds its equivalent in Article 70, St. Germain, Article 62, Trianon, in Article 76, St. Germain (referring to Czechoslovakia and Jugoslavia), Article 56, Trianon, in Article 64, St. Germain (*ipso facto* acquisition of Austrian and Hungarian nationality). (See Minorities Treaties, Chapter V.) The principle is also applied in the Burgenland on the Austro-Hungarian frontier, *ipso facto* acquisition of either nationality being acquired through the possession of *Heimatsrecht* on the date of the coming into force of the two Treaties (Art. 71, Trianon).

The origin of this principle and its application in the territories of the ex-Austro-Hungarian Empire are dealt with exclusively in Chapter VII. The fact that it was included in the above-mentioned Peace Treaties led to its inclusion, as a criterion for nationality acquisition, in the Minorities Treaties, Interstate Conventions, Laws, and Decrees concerning territories which originally formed part of the Empire.

The principle of *Qualified Birth*, i.e. *Ordinary Birth*

and *Habitual Residence of Parents*, is applied only in the Minorities Treaties and certain Interstate Conventions. (See Chapters V and VIII.)

The principle of *Ordinary Birth* is applied under the *Versailles Treaty* in the following areas: Alsace-Lorraine; persons of unknown parents or of unknown nationality becoming French *ipso facto* if born therein (Art 62, Annex I). Germans wishing to acquire French nationality *may claim* it if born therein and if they have served in the Allied armies *or* if born therein before May 10, 1871, of foreign parents (Art. 62, Annex II). Under the *St.Germain Treaty* the principle is applied to the Italian Tyrol; Austrians becoming Italian if born in that territory *and* possessing *Heimatsrecht* (no date limit set) (Art. 71). Austrian nationality is acquired *ipso facto* by persons born in Austria who are not *born nationals* (English text) of another State (Art. 65). (See Minorities Treaties, Chapter V.)

Under the *Trianon Treaty*, Hungarian nationality is acquired, as in the case of Austrian under the St. Germain Treaty (Art. 57). (See Minorities Treaties, Chapter V.) Under the *Neuilly Treaty* Bulgarian nationality is acquired *ipso facto* on the same condition as in the cases of Austrian and Hungarian under the St. Germain and Trianon Treaties, i.e. by persons born in Bulgaria who are not born nationals of another State. (See Minorities Treaties, Chapter V.)

Provision is made for the *Right of Option* under all the Peace Treaties. Those persons who are entitled to opt are those who have acquired a nationality *ipso facto* by virtue of the Treaty provisions.

Under the *Versailles Treaty* the principle is applied to the following areas—Eupen-Malmédy: Germans who have become Belgians may opt for German nationality within two years from the date of the definite transfer of the territory (Art. 37). Czechoslovakia: Germans becoming Czechoslovaks may opt for German nationality within two years of the date of the coming into force of the Treaty (Art. 85, and see Minorities Treaties, Chapter V). Czechoslovaks possessing German nationality may opt for Czechoslovak within a period of two years (Art. 85). Poland: Germans who have become Poles (see Minorities Treaties, Chapter V) may opt for German nationality within a period of two years after the ratification of the Treaty and vice versa (Art. 91). Dantzig: Germans becoming Dantzig Free Citizens may opt for German nationality (option delay two years) (Art. 106). Schleswig: Germans born and not habitually resident in this territory may opt for Danish nationality within two years of the date of the final transference of the territory to Denmark. Germans having acquired Danish nationality through habitual residence may opt within two years from the same date for German nationality (Art. 113).

Under the *St. Germain Treaty* the right of option is provided for in the following articles—Article 78: Austrians acquiring *ipso facto* a new nationality under Article 70 may opt for the nationality of the Successor State in which they had their previous *indigénat* (*Heimatsrecht*)—option delay within one year from the date of the coming into force of the Treaty. Article 79: plebiscite areas (Klagenfurt, Burgenland, Teschen, etc.); inhabitants entitled to plebiscite vote may opt for the nationality of the State to

which they are not attributed—option delay—within six months of the final transfer of territory. Article 80: persons acquiring Successor State nationality other than Austrian under Article 70 may opt for the nationality of such Successor State as the majority of which are of the same race and language—option delay—within six months of the coming into force of the Treaty.

Under Article 81, the Contracting Parties guarantee to set no obstacles in the way of the exercising of the above rights.

Under the *Trianon Treaty*, Articles 63, 64, and 65 correspond to Articles 78, 80, and 81 of the St. Germain Treaty, reading "Hungarian" instead of "Austrian."

Under the *Neuilly Treaty*, the right of option is provided for in the following articles: Article 40: Bulgarians becoming Jugoslavs may opt for Bulgarian nationality within two years from the date of the coming into force of the Treaty. Jugoslavs of Bulgarian nationality may opt within the same period for Jugoslav nationality. Furthermore, Jugoslavs, Bulgarian nationals, who are resident abroad and are not nationals of another State, may opt within the same period of two years for Jugoslav nationality and acquire such in accordance with the conditions laid down by the Jugoslav Government. Article 45: Bulgarians becoming Greeks may opt for Bulgarian nationality within the same period of two years and vice versa.

Under the *Lausanne Treaty*, the right of option is provided for in the following cases—Cyprus: Turks who have become British may opt for Turkish nationality within two years of the coming into force of the Treaty. General: Turks acquiring the nationality of the State to which

Turkish territory is ceded may opt for Turkish nationality (Art. 31) if differing by race from the majority of the population of the new State, and they may opt for such State as the majority of which is of their race subject to the consent of that State (Art. 32); if habitually resident abroad they may also opt according to the provisions of Art. 32, subject to the consent of that State and to any agreements which it may be necessary to conclude between the foreign State in which they are habitually resident and the State for which they opt (Art. 34). Option delay is two years. Under Article 35 of the Treaty, the Contracting Parties undertake to place no obstacles in the way of the exercise of the above right.

In all the above-mentioned cases regarding the right of option provided for under the Peace Treaties, persons who have not opted within the specific time-limits *should* be considered as having retained the nationality which they had acquired *ipso facto* under the Treaties.

## CHAPTER IV

## CONCLUSIONS REGARDING THE NATIONALITY PROVISIONS OF THE PEACE TREATIES

IN the post-War Peace Treaties the principle of DOMICILE or HABITUAL RESIDENCE is the criterion most favoured for the acquisition of nationality.

Under the Versailles, Neuilly, and Lausanne Treaties it stands foremost amongst the principles applied, and, with Alsace-Lorraine and Turkish transferred territory excepted, suffices for the *ipso facto* acquisition of Successor State nationality. It is, however, on almost every occasion supplanted by the principle of RIGHTS OF CITIZENSHIP (*indigénat*) under the Treaties of St. Germain and Trianon, and as the territorial changes of the old Austro-Hungarian Empire by a long way surpass in size and population those effected elsewhere in Europe, this fact is of paramount importance to the student of post-War nationality problems.

The dates upon which the application of these two principles became operative are fixed in many cases prior to the application of the Treaties (Eupen-Malmédy, August 1, 1914; Germans of Poland, January 1, 1908; Schleswig, October 1, 1918, etc.). The principle of QUALIFIED BIRTH does not figure in the Peace Treaties.

The principle of ORDINARY BIRTH should suffice in most cases for the acquisition of nationality where those of Habitual Residence and *Indigénat* cannot be successfully applied. The condition usually laid down is that the applicant wishing to acquire the nationality of the Successor State in which he was born must not be a born

national of another State. Other conditions are also laid down before the principle can become operative, such as in the cases of Alsace-Lorraine and the Italian Tyrol.

The exercising of the RIGHT OF OPTION is widely provided for under the Treaties of Peace. The option period is in almost every case of two years' duration from the date of the coming into force of the Treaty. Option delays of one year and of six months also figure in the St. Germain and Trianon Treaties. No provision is made for the right of option in the articles of the Versailles Treaty relating to Alsace-Lorraine.

It is impossible to judge from the Peace Treaty texts alone the extent to which their provisions have adequately met the nationality problems that arose through the changes of frontiers. The Treaties were drafted in such a way as to face immediate requirements only and to prepare the way for subsequent negotiations which in the form of Minorities Treaties, Interstate Conventions and State Laws and Decrees would supply the structure necessary for the settlement of nationality questions.

For purposes of clearness, the minorities clauses of the Peace Treaties are dealt with in the same chapters as are the Minorities Treaties and Interstate Conventions, and such conclusions as are now drawn regarding the nationality problems as they arise under the Peace Treaties are limited to such clauses only as are of *local* and not of *international* concern, and as refer only to territorial settlements in relation to which no provision is made for the application of international guarantees.

The areas in question are under the *Versailles Treaty*, those of Eupen-Malmédy, Alsace-Lorraine, and Schleswig; the Treaty clauses regarding Czechoslovakia, Poland, the Saar Valley, Memel, Dantzig, Upper Silesia, and the Baltic States, relating to areas which are, from the standpoint of minorities protection, of international concern.

In the case of EUPEN-MALMÉDY, the principles applied are those of Habitual Residence and the Right of Option. The date fixed for habitual residence, August 1, 1914 (Art. 36), is reasonable, as is also the option delay of two years (Art. 37). There are, however, no birth provisions. *Statelessness* could arise in the following ways:

(1) A German having acquired Belgian nationality *ipso facto* under Article 36, and having opted for German nationality under Article 37, is refused German nationality by Germany, who is not obliged either under the Treaty or under her nationality law of November 5, 1923, to accept him as her national. Through having registered his desire to opt for German nationality, he would automatically have lost the Belgian nationality which he had *ipso facto* acquired under Article 37 of the Treaty and paragraph 2 of Article 2 of the Belgian Nationality Law of September 15, 1919. He would be regarded as having renounced Belgian nationality as under Article 9 of the Nationality Law of August 4, 1926, and could only claim Belgian nationality under Article 8 of that Law, subject to the authorization of the King.

(2) A German, born or resident in Belgium, but failing to acquire Belgian nationality *ipso facto* through habitual residence, applies for the same and is refused. Neither

the Treaty nor German Law requires that Germany should recognize his retention of German nationality, and ten years' residence abroad usually involves automatic loss of German citizenship (Section 21, Law of June 1, 1870; Section 31, Law of July 22, 1913, and Law of November 5, 1923). Under Article 278 of the Versailles Treaty of June 28, 1919, Germany undertook to recognize any new nationality which had been or might be acquired by her nationals under the Laws of the Allied and Associated Powers, and to regard such persons as having lost their German nationality, but she did not undertake to recognize as having retained German nationality those former nationals who had failed to acquire Successor State nationality. This conclusion, therefore, applies to Alsace-Lorraine also and to other areas detached from Germany. In both the above-mentioned cases statelessness could only be avoided through naturalization, and the conditions governing nationality acquisition through naturalization in disputed territories are necessarily severe.

As regards *double nationality*, this eventuality is rendered practically impossible through Article 278 of the Treaty above mentioned. This article renders inapplicable to the detached territories Section 25 of the German Nationality Law of July 22, 1913, which makes it possible in certain cases for Germans to retain German citizenship, whilst having acquired a foreign nationality. This conclusion is, therefore, equally applicable to *Alsace-Lorraine. Undesired Nationality* is possessed where Germans having become Belgians *ipso facto* through habitual residence and wishing to claim their original German nationality have failed to opt within the time-limit prescribed. This defect should

be largely dismissed by Articles 9 and 10 of the Belgian Law of August 4, 1926, which allow for the *renunciation* of Belgian nationality in favour of the recovery of foreign nationality. There is no evidence of the Treaty provisions giving rise here to *contested nationality*.

In the case of ALSACE-LORRAINE (Articles 51, 53, 54, 62, 79; Annex to Section 5, Part 3; and 278 of the Versailles Treaty) the principle applied more closely approaches that of *ipso facto* acquisition *en masse* than any other. We have referred to this principle in Part I, Chapter IV, and have found that it was applied to the same territories by Germany after the Franco-Prussian War of 1870–71. We have noted that this principle, if combined with that of the Right of Option, renders the arising of statelessness very nearly impossible, but that its drastic character sows seeds of discontent which in time may grow to dimensions of considerable political importance, as, for example, in the case of Alsace-Lorraine after 1870, New Mexico after 1846, and South Africa after 1902. If, however, no provision is made for the Right of Option, the evil of statelessness necessarily presents itself in an alarming manner—at least theoretically. The Versailles Treaty makes no provision for the Right of Option for Germany by the population of Alsace-Lorraine. The failure to provide for this most elementary of principles constitutes a Treaty defect. Furthermore, Germany must recognize as French all persons declared by France to be French. These persons must remain French whether they wish to or no. The Treaty makes no general provision for the *ipso facto* acquisition of nationality of persons not declared to be French other than that for persons born

in Alsace-Lorraine of unknown parents or of unknown nationality, who become French *ipso facto*. German nationals in Alsace-Lorraine who have not been declared to be French are no doubt considered by France as possessing German nationality, since under Article 53 Germany must receive such persons in her territory, but the Treaty does not provide for their recognized retention of German nationality. It is merely assumed that they have *retained* their original German nationality. This assumption, in practice, suffices to set a limitation to the number of stateless persons. But from the standpoint of the Law of Nations, where a territorial change of such magnitude is involved, such *assumption* of nationality possession cannot be regarded as sufficient, and can certainly in no manner take the place of an effective option declaration or of a Treaty provision expressly stating that persons failing to acquire the nationality of the Successor State retain their original nationality. Neither double nor contested nationality can easily arise in this area as Germany under Article 278 recognizes as French all persons declared by France to be French.

Failure to provide for the Right of Option and Assumption of Nationality Possession constitute the two defects in the Treaty provisions concerning Alsace-Lorraine. These defects are not remedied under either French or German Municipal Law.

In the case of SCHLESWIG the principle of Habitual Residence before October 1, 1918, is applicable (Art. 112). The Right of Option for both German and Danish nationality is provided for (Art. 113, 1 and 2). Germans born in this territory but not habitually resident therein

may opt for Danish nationality, and any person habitually resident in Schleswig may opt for German nationality. These Treaty provisions are further substantiated by the Danish Nationality Law No. 474 of September 5, 1920, and amended by the Law of June 12, 1922. Statelessness might arise as in the case of Eupen-Malmédy, seeing that Germany is under no Treaty obligation to consider as her nationals persons who may have opted for German nationality under Article 113. There is no reason to suppose that cases of double or contested nationality arise in this area. It is worthy of note that the Danish Government, though under no international obligation to do so, publishes periodical reports on the situation of the German minority in Denmark, and it would not appear from these reports that any important nationality issues are still outstanding as between Germany and Denmark.

Under the Treaties of *St. Germain* and *Trianon*, the only territories not covered by the Minorities Treaties and the Interstate Conventions directly arising out of these are those acquired by ITALY from Austro-Hungary after the War. These include the Trentino, Trieste, and later Fiume areas, together with certain islands off the Dalmatian coast. Italian nationality is acquired *ipso facto* through possession of *indigénat* (Right of Settlement or Citizenship, *Diritto di Pertinenza*) in some commune of the transferred territories prior to May 24, 1915 (Art. 71, St. Germain). In the case of the territory of Fiume, the Italian Nationality Law of May 12, 1927,[1] however, fixes the date of *indigénat* possession at, on, or prior to

[1] See also Article 7 (2) of the Treaty of Rapallo.

January 1, 1910 (see Arts. 76 and 62 of St. Germain and Trianon respectively concerning Jugoslavia and Czechoslovakia, Minorities Treaties). Italian nationality may be acquired with the approval of the Administrative Authorities or particular legislation on grounds of residence by *personnes morales* (Art. 75, St. Germain).[1] Italian nationality may also be acquired *ipso facto* through birth in the transferred territories, but such birth must be accompanied by the possession of *indigénat*.

The Right of Option is extensively provided for, but the principle with which its application is made correlative is always that of the possession of *indigénat*. Under Article 78, St. Germain (Art. 63, Trianon), Italian nationality may be acquired through option by ex-Austro-Hungarians who have acquired *ipso facto* a Successor State nationality other than Italian, Austrian, or Hungarian,[2] if the commune in which they were formerly *heimatberechtigt* lay in territory transferred to Italy. The option period in this case is one year from the date of the coming into force of the Treaty. Italian nationality may also be acquired through option (six months' delay) under Article 80, St. Germain (Art. 64, Trianon), by ex-Austro-Hungarians having *ipso facto* acquired a Successor State nationality other than Italian and who are Italian by race and language. Under Article 81 of St. Germain and 65 of Trianon, the Contracting Parties to these Treaties

[1] See Nationality Law of January 29, 1922, No 43.

[2] Persons who have acquired Austrian or Hungarian nationality *ipso facto* under Articles 64 and 56 of St. Germain and Trianon respectively may not opt for another Successor State nationality on the basis of the principle of *Indigénat*. (See chapter on Minorities Treaties.)

guarantee to set no obstacles in the way of the exercising of the above option rights. The Treaty texts themselves cannot be regarded as being defective, as it is apparent that almost every possible precaution was taken to prevent statelessness or contested nationality arising. Unfortunately, however, the application of the principle of *Indigénat* for the establishing of nationality has met with many obstacles, the foremost of these being the fact that communal membership or *Heimatsrecht* in a commune, although required by Law in the old Austro-Hungarian Empire, was comparatively rarely complied with outside the sphere of "poor relief," seldom, if ever, in ex-Hungarian territory, and was entirely unknown in such territories as Bosnia-Herzegovina and the Dalmatian Coast. The questionable value of the principle of *Indigénat* as a criterion of nationality acquisition is dealt with later in a special chapter. For the present it would seem to be sufficient to observe that the Treaty drafters would have avoided much confusion and unhappiness if they had substituted, where necessary, the principle of *Heimatsrecht* or *pertinenza* by that of Domicile or Habitual Residence. A large number of persons who would have had a normal claim to Italian nationality were destined to face statelessness or contested nationality *vis-à-vis* Italy through the fact alone that they could not supply the necessary evidence of their having been inscribed in the communal registers of the territories transferred to Italy. Furthermore, if we examine the Italian nationality Decrees or Laws of October 16, 1924, and January 10, 1926, and especially the provisions of the latter, we are led to conclude that the number of persons destined to be stateless

must have been considerable.[1] To what extent these politically dictated provisions constitute an infraction of Articles 81, St. Germain, and 65, Trianon, above referred to, is not a question strictly relevant to the purpose of this book. Infraction or non-infraction, the Treaty texts are not in themselves defaultive as in the case of Alsace-Lorraine. The most that one can do is to note with regret that the Laws in question should refer at all to the option rights accorded under the Peace Treaties, thus taking away the general character of the Italian Political Sanctions Law of January 31, 1926, and applying particularly stringent provisions to the territories acquired from the ex-Austro-Hungarian Empire. The comparatively belated Laws relating to Fiume and the Dalmatian Islands bear witness to a certain confusion arising out of the application of the principle of *Indigénat*, and it is to be feared that as a result of this confusion problems of statelessness and of contested nationality must have been felt acutely in these areas. It is true that it is Italy whom we must thank for having taken the happy initiative of securing the signatures of the Successor States of the ex-Austro-Hungarian Empire to the Rome Convention of April 6, 1922, and that the ratification of this Convention by Italy and Austria on March 2, 1924, and by Czechoslovakia in 1930, has done much to alleviate the situation, but it will not be until both Hungary and Jugoslavia, the two remaining

[1] Law No. 15, January 10, 1926. Sole article: "The concession of citizenship resulting from option in accordance with the Peace Treaties may at any time be revoked, when the person who has acquired citizenship shows himself, by his political conduct, to be unworthy of it."

States, most interested *vis-à-vis* Italy, have ratified, that the evil can definitely be suppressed.[1]

Under the Treaties of *Neuilly* and *Lausanne* the areas which concern this work which are not covered by the nationality provisions of the Minorities Treaties are those of Turkey proper and Turkish Thrace, British Cyprus, and the Italian Dodecanese.

Furthermore, and this is a point of the utmost importance—as will be seen later—the Treaty of Lausanne contains no general nationality clauses relating to the territories recognized as forming part of Turkey proper under the Treaty. The Treaty articles hitherto mentioned relate only to territories acquired by Greece, Bulgaria, etc., since the last Balkan War of 1913; and such territories as have been lost to Great Britain (Cyprus) and Italy (Dodecanese) and to the Mandatory Powers under the Lausanne Treaty. As regards the nationality situation in Thrace, a special Protocol was signed at Lausanne by the Principal Allied Powers and Greece on July 24, 1923, ratifying with certain exceptions the Treaty regarding Thrace, originally concluded at Sèvres on August 10, 1920. But this Protocol, together with Articles 44 and 45 of the Neuilly Treaty and the nationality articles of the Greek Minorities Treaty, relates only to that part of Thrace which has not remained Turkish. The only provisions of the Lausanne Treaty that bind Turkey in any concrete form as far as the recognition of the acquisition or retention of Turkish nationality is concerned are those whereby Turkey, under the compulsory exchange of

[1] The Rome Convention is dealt with later on in this book. Interstate Conventions, etc.

populations *vis-à-vis* Greece, recognizes as Turkish nationals such Moslems of Greece as are included in the Exchange Convention, and where she accepts that the Greek population of Constantinople shall not be subjected to compulsory exchange.

Thus Turkey may in her own territory draw up such nationality laws as she pleases. Furthermore, no international intervention on grounds of nationality can take place as regards her religious minorities, unless such measures as are taken by the Government can be proved to be incompatible with the "Minorities" provisions of the Lausanne Treaty, i.e. evidence of differentiation of treatment on religious grounds. The situation of the religious minorities of Turkey, and of the Armenian, Kurdish, and other refugees from Turkey, is dealt with later on in this book. It is enough to state here that the failure to insert nationality articles concerning Turkey proper in the Treaty text has led to one of the most terrible nationality catastrophes that the world has ever witnessed. If the Compulsory Exchange proved a bitter pill for Greece to swallow, the exodus of the Armenians from Asia Minor in 1922, resulting under the Turkish Laws of May 23, 1927 (No. 1041), and of May 28, 1928 (Art. 12), in automatic loss of Turkish nationality and the liquidation of property by the Government, contributed perhaps more than any other event—with the Russian exodus excepted—towards filling the already impressive ranks of the post-War stateless. The efforts made by the League of Nations to face this disaster are described later on, as also those made by the representatives of the Principal Allied Powers in the Commissions at Lausanne; but the

initial fault has never been remedied, and the Lausanne Treaty must continue to stand out in history as the most defective of Peace Treaties concluded within a period of more than a century of nationality negotiations. Even the flimsy hopes left by Ismet Pasha's declaration at Lausanne, where the possible return to Turkey of individuals with a satisfactory political record was provided for, have since been utterly and completely shattered. The only favourable result of this defect now worth recording is the extremely homogeneous character of the population of Turkey in the light of the Official Census of October 28, 1927. The Census, carried out under the supervision of the Belgian statistician, M. Camille Jacquart, returned a total population of 13½ millions. In examining the figures given for the sixty-three Turkish vilayets, we have ascertained that the total Turkish-speaking population borders close upon twelve millions.[1]

Such nationality issues as arise in *Turkish Thrace* and relative to Bulgarians living therein, in Constantinople or in other parts of Turkey, are covered by the Turko-Bulgarian Protocol signed at Ankara on October 18, 1925. Under this Protocol Turkey recognizes the status of Bulgarian nationals for all Bulgarians born on the territory of Turkey of 1912, and who, having emigrated to Bulgaria, previous to the signing of the Protocol, have acquired Bulgarian nationality by virtue of the domestic legislation in force in Bulgaria. Bulgaria recognizes the status of Turkish nationals to *all Moslems born within the limits of* Bulgaria of 1912, and who, having

[1] Detailed figures regarding the Census results show that only 20 Armenians remained in the Smyrna villayet.

emigrated to Turkey previous to the signing of the Protocol, have acquired Turkish nationality by virtue of Turkish domestic legislation. If Bulgarians born on the European territory of Turkey, *the city of Constantinople excepted*, having emigrated to Bulgaria, should wish to re-establish themselves in that territory, *Turkey reserves complete liberty to grant or refuse its consent to that effect in each particular case.* The Bulgarian Government reserves exactly the same right as regards Moslems born in territory annexed to Bulgaria in 1913, and who, having emigrated to Turkey, apply for return to Bulgaria. It is possible that if the Armenian Republic (not Soviet) created by the Treaty of Sèvres had come into being instead of being killed in its infancy, as it was at Lausanne, a Protocol similar to the Turko-Bulgarian would have determined the question of the Right of Return of Armenians individually to Turkey. In fact, we find in this Turko-Bulgarian Protocol the same insistence on the part of Turkey as expressed by Ismet Pasha at Lausanne, that any proposal in the nature of a return to Turkey *en masse* would be definitely rejected, and that Turkey reserved the unqualified right to determine the right of return *in each individual case.*

From the Protocol text it is not clear what the position would be of Bulgarians by race, born on the European territory of Turkey, who have emigrated to Bulgaria and have then applied for the right of return to Turkey and have been rejected—or vice versa with Moslems born on Bulgarian territory. The simple act of application might well involve the loss of the original nationality possessed. Such persons would be confronted with statelessness.

We have not been able to ascertain that either the Bulgarian Law of July 24, 1924, or the Turkish Law of May 28, 1928, provides for remedies in such cases. Under the Turkish Law the children of such persons, if born in Turkey after January 1, 1929, would be Turkish. The Protocol complicates matters further by treating the Moslems of Bulgaria in these territories as Turkish. One must needs ask oneself what the situation is of Moslems such as the Pomaks, who are Bulgarians and not Turks by race. The reservation made as regards Bulgarians born in the prefecture of Constantinople and in Turkish Asia Minor is puzzling and should be also noted.

There is good reason to believe, therefore, that whilst the Protocol tends to provide certain remedies for the nationality situation in this area not covered by the Peace Treaties, the possibility of nationality conflicts arising in Western Thrace still presents itself.

As regards the island of *Cyprus*, Article 21 of the Lausanne Treaty provides for acquisition of British nationality *ipso facto* through the habitual residence in the island on or before November 5, 1914. Under the same article such Turks who have thus become British may opt for Turkish nationality within two years of the coming into force of the Treaty, i.e. before August 6, 1926. Under Article 35 of the Treaty, both Great Britain and Turkey undertook to set no obstacles in the way of the exercise of this option right. Despite the fact that there is no birth clause, the application of the principles of Habitual Residence and Right of Option with such reasonable time-limits would tend to reduce to a minimum

any causes for complaint on grounds of nationality as between Turkey and Great Britain.

In the case of the Italian islands of the *Dodecanese* (Rhodes, Stampalia, Calchos, Scarpato, etc.), Article 30 of the Lausanne Treaty provides that Turks inhabiting these islands acquire Italian nationality *ipso facto*, but "on the conditions laid down by the local Laws." Under Article 31 of the Treaty, these persons having become Italian may opt for Turkish nationality—or they may opt for Greek if they are Greeks by race, or if they are Syrians for Syrian, and so forth—but such option *on the basis of race* must always be made subject to the consent of the State in question (Art. 32). These persons, even if habitually resident abroad, may opt on a basis of race (Art. 32), but subject to the consent of the State opted for and to any agreements which it may be necessary to conclude between the foreign State in which they have habitual residence and the State for which they opt (Art. 34). Under Article 35, Italy and the other contracting parties to the Treaty guarantee to recognize such option rights.

From the Treaty texts we must conclude that Turks of the Dodecanese, having acquired Italian nationality and having opted for Turkish nationality before August 6, 1926, have effectively acquired Turkish nationality through option. No date is fixed under the Treaty as regards the term of residence required, and the right of option is not made subject to the consent of Turkey as in the case of Article 32. The Italian Law No. 1854 of October 15, 1925, however, in application of Article 30 of the Lausanne Treaty, fixes the date of habitual residence for Turkish

subjects of the islands at August 6, 1924, date of the coming into force of the Treaty. By this measure all persons who were not recognized Turkish nationals at that date were deprived of the right of benefiting from the Treaty provisions through habitual residence. In view of the fact that quite a large number of residents in the islands must have effectively ceased to be Turkish nationals after the Greek withdrawal from Asia Minor in 1922, one cannot but consider the choice of this particular date *as an unhappy one.* Article 1 (1) of this Law recognizes the right of option as provided for under the Lausanne Treaty. Under the Italian Law No. 1378 of March 13, 1927, the Governor of the islands may reject in individual cases declarations for the election of Italian citizenship, presented on the basis of Article 34 of the Lausanne Treaty by persons natives of the Italian islands of the Aegean established abroad.

Of the nationality provisions of the Peace Treaties, those of the Lausanne Treaty are the most defective. The application of not a single nationality article is placed under international guarantee, and the authority permitted to Turkey for promulgating such Nationality Laws as she pleases is supreme. It has been argued that with the adoption of the Swiss Civil Code by Turkey, not only the abolition of the Capitulations has been justified, but that the Civil Legislation henceforward in force in Turkey is now modelled upon the highest type of which Europe can boast. It yet remains to be seen to what extent theory coincides with practice, and it would be obviously unfair

to expect too much in the earlier stages from the Turkish nationalist revolution. Furthermore, the situation of the Principal Allied Powers *vis-à-vis* Turkey at Lausanne was widely different from their situation *vis-à-vis* the other Central Powers in 1919. The Gazi and Ismet Pasha were not confronted by President Wilson, Clemenceau, and Lloyd George, the original architects of the abortive Treaty of Sèvres, but by Curzon, the realist ex-Viceroy of India, and a defeated Venizelos. France, unfortunately, was but a secondary contributor to the negotiations. The "desperate" attempts made by the Anglo-Saxon diplomatists to secure some sort of reasonable treatment for the "poor" Armenians were recorded in the minutes of the Conference Commissions, and even these attempts do not impress one in the reading of the existence of that firmness, courage, and precision due to the occasion. A feeble and double-faced business clothed in all the paraphernalia of an ultra-royal consideration for tact and Empire exigencies is all that the student may glean from the documents of these sinister negotiations.

It is to be regretted that the Versailles Treaty, so admirably fair in most of its nationality provisions, should have run aground just where the signals for caution were most apparent. That Germany dealt harshly with the French population of Alsace-Lorraine in 1871 does not excuse the Principal Allied and Associated Powers from having repeated the evil in 1919. The right of option is an elementary principle without which the Law of Nations, with respect to nationality, would possess but little prestige.

The Treaties of St. Germain and Trianon might have

proved exemplary for detail, precision, and their reasonable option delays, but unhappily the unsatisfactory principle of *Indigénat* figures everywhere and cannot be overridden. The Italian Nationality Laws for her acquired territories are severe and not always in accordance with the Treaty provisions. And yet it was Italy who first took the generous initiative of securing the Successor States' signatures to the Rome Convention.

The Treaty of Neuilly cannot be said to be defective in its nationality provisions—it is more incomplete than defective—and facing many Balkan issues as it did, it could not pretend to cope in itself with a series of situations that required to be settled by subsequent negotiations.

## CHAPTER V

## THE NATIONALITY PROVISIONS OF THE MINORITIES TREATIES AND DECLARATIONS

WE have described the origin and character of the Minorities Treaties and Declarations, and have observed that the former derived directly from special provisions contained in the Peace Treaties, whilst the latter were required from certain States when admitted to membership of the League of Nations. We have also noted that the Peace Treaties relating to Austria, Hungary, Bulgaria, and Turkey contain special minorities articles which are placed under international guarantee, and which will be referred to in this chapter, as being included amongst the Minorities Treaties. We have also observed that all these minorities articles contain nationality articles, except in the case of the Lausanne Treaty, that the true application of these nationality articles is officially a matter of *international concern*, not only if violated but even if in danger of violation, and that the Signatory States of these Minorities Treaties must regard these articles as fundamental laws over which no other laws, regulations, or official actions may prevail. We have appreciated the fact that the inclusion of certain well-defined principles governing acquisition of nationality in these Minorities Treaties constitutes from the standpoint of International Law a distinct sign of progression towards the codification of such principles under the Law of Nations.

The *Minorities Treaties* in question are those signed by

Poland (June 28, 1919, placed under the guarantee of the League of Nations, February 13, 1920), Bulgaria (Neuilly Treaty, November 27, 1919, placed under the League of Nations' guarantee, October 22, 1920), Czechoslovakia (September 10, 1919, placed under the League of Nations' guarantee, November 29, 1920), Jugoslavia (September 10, 1919, placed under the League of Nations' guarantee, November 29, 1920), Austria (St. Germain Treaty, September 10, 1919, placed under the League of Nations' guarantee, October 22, 1920), Rumania (December 9, 1919, placed under the League of Nations' guarantee, August 30, 1921), Hungary (Treaty of Trianon, June 4, 1920, placed under the League of Nations' guarantee, August 30, 1921), and Greece (Lausanne Treaty, July 24, 1923, in force August 30, 1924).

Divided between these eight Treaties there are in all twenty-seven nationality articles immediately placed under international guarantee. It is astonishing, however, that so small a number of articles should have given rise to the immense difficulties of application, interpretation, and negotiation that have confronted statesmen and experts from the outset up to the present time. Even today it can only be with extreme caution and comparative uneasiness that the expert approaches the vast field of uncertainty that envelops the few nationality provisions of these Treaties. The truth is that many of these articles are in the first place made subject to particular provisions of the Peace Treaties, and that in the second place a veritable labyrinth of State Laws and Decrees promulgated were drafted on particular interpretations set to these articles. Furthermore, the principles embodied in the articles raise

problems of precedence which have led to contested issues, innumerable delays, and, which is worse, to artificial remedies, such as naturalization, or to drastic abuse, such as expulsion. The line of demarcation between the areas where the principle of Habitual Residence begins and that of *Heimatsrecht* or *Indigénat* begins—taken as an example—compels one to think in terms of territory and to revert to a Europe in which the Russian, Prussian, and Austro-Hungarian Empires had prevailed. The psychological effect of such a process of "reversion to what was" is far from healthy and is conducive to the making of morbid comparisons and is certainly not compatible with the purpose which the Treaties were intended to fulfil.

It is for this reason that we feel it essential to make a bold attempt where a bold attempt is needed, to simplify where such simplification is permissible, even at the risk of attracting the criticism of the most unbiassed and competent experts.

In the first place the process of "reversion to what was" is *imposed* upon us by the Peace Treaties; thus we must accept it. Secondly, we must dismiss the belief that *some degree* of discrimination was not purposed in the Peace Treaties between the legal position of the *original* inhabitants of a State and its *acquired* inhabitants. Thirdly, we cannot overlook the fact that certain principles governing nationality possession were for a long period of time applied in particular areas, whereas they were *never* known in others. Finally, we must give precedence to certain nationality principles over others.

The POLISH MINORITIES TREATY having been the first of its kind ever signed in the political history of the world, is most usually chosen by writers on minorities questions as the standard type of minorities Treaty, upon which the subsequent Treaties of this nature were largely moulded. The nationality articles of this Treaty have, furthermore, been made the subject of an opinion given by the Permanent Court of Justice at The Hague in 1923 and led to the Germano-Polish Convention of Vienna in 1924. During the Vienna negotiations an all-important contribution to the clarification of the nationality articles of the Minorities Treaties was made by the President of the Conference, the Belgian, M. van Kaeckenbeck, who set a clear interpretation to the meaning of Articles 3–5 of the Polish Minorities Treaty.

The *Polish Treaty*, signed on June 28, 1919 (in force on January 10, 1920), and placed under the guarantee of the League of Nations on February 13, 1920, derived from Article 93 of the Versailles Treaty. The preamble to this Treaty signed by Poland and by the Principal Allied and Associated Powers reads as follows:

> "Whereas the Allied and Associated Powers have by the success of their arms restored to the Polish nation the independence of which it had been unjustly deprived; and whereas by the proclamation of March 30, 1917, the Government of Russia assented to the re-establishment of an independent Polish State; and whereas the Polish State, which now in fact exercises sovereignty over those portions of the former Russian Empire which are inhabited by a

majority of Poles, has already been recognized as a sovereign and independent State by the Allied and Associated Powers; and whereas under the Treaty of Peace concluded with Germany by the Allied and Associated Powers, a Treaty of which Poland is a signatory, certain portions of the former German Empire will be incorporated in the territory of Poland; and whereas under the terms of the said Treaty of Peace, the boundaries of Poland not already laid down are to be subsequently determined by the Principal Allied and Associated Powers, the United States of America, the British Empire, France, Italy, and Japan, on the one hand confirming their recognition of the Polish State, constituted within the said limits as a sovereign and independent member of the Family of Nations, and being anxious to ensure the execution of the provisions of Article 93 of the said Treaty of Peace with Germany; Poland, on the other hand, desiring to conform her institutions to the principles of liberty and justice, and to give a sure guarantee to the inhabitants of the territory over which she has assumed sovereignty. . . . [The signatures follow.] After having exchanged their full powers, found in good and due form, have agreed as follows:"

The nationality articles of the Treaty are the following, including those in the Versailles and St. Germain Peace Treaties to which Article 3 refers:

*Article 3.* "Poland admits and declares to be Polish nationals *ipso facto* and without the requirement of

any formality German, Austrian, Hungarian or Russian nationals *habitually resident* at the date of the coming into force of the present Treaty in territory which *is or may be* recognized as forming part of Poland, *but subject to any provisions in the Treaties of Peace with Germany or Austria respectively* relating to persons who *became resident* in such territory *after a specified date.*

"Nevertheless, the persons referred to above who are over eighteen years of age will be entitled *under the conditions contained in the said Treaties* to opt for any other nationality which may be open to them. . . .

"Persons who have exercised the above right to opt must, *except where it is otherwise provided in the Treaty of Peace with Germany*, transfer within the succeeding twelve months their place of residence to the State for which they have opted. . . ."

The nationality article (91) of the *Versailles Treaty*, to which the above Article 3 is made subject, reads as follows:

"*German* nationals, *habitually resident* in territories recognized as forming part of Poland will acquire Polish nationality *ipso facto* and will lose their German nationality.

"*German* nationals, however, or their descendants, who become *resident* in these territories after *January 1, 1908*, will not acquire Polish nationality without a special authorization from the Polish State, etc.

"Within a period of two years after the coming into force of the present Treaty [i.e. before January 10, 1922,] German nationals over 18 years of age, *habitually resident in any of the territories recognized as forming part of Poland* will be entitled to opt for German nationality.

"Poles who are German nationals over 18 years of age and *habitually resident* in Germany will have a similar right to opt for Polish nationality, etc."

N.B.—Words in italics by the Author.

The nationality articles of the St. Germain Treaty to which Article 3 of the Polish Treaty is made subject make no *reference whatever* to persons who become *resident* in Polish territory after a *specified date*. Hence one might be inclined at first sight to conclude that the principle of Habitual Residence is alone applicable under Article 3 to the whole territory of Poland, *including that acquired from Austro-Hungary*. On further consideration, however, it is difficult to accept this conclusion as final. Article 3 definitely refers to a Treaty with Austria, and the only Treaty to which one can turn is that of St. Germain. The option paragraph of Article 3, where it refers to persons entitled to opt "under the conditions contained in the *said Treaties*," clearly refers to the St. Germain Treaty also. According to Article 78 of the St. Germain Treaty, Austrians who have acquired, for example, Polish nationality under Article 70 of that Treaty, may opt for the nationality of the Successor State in which they had

their *previous indigénat*. There is no mention here of habitual residence but only of *indigénat*. And *previous* implies the existence of *present*. Furthermore, the option delay prescribed by Article 3 of the Polish Treaty, taken in conjunction with the provisions of Article 91 of the Versailles Treaty (option as before January 10, 1922), only relates to Germans who have become Poles, and not to Austrians, Hungarians, or Russians. The option delays for these other nationalities fall according to Article 3 under the conditions contained in the *said Treaties*, i.e. at all events under the Treaty of *St. Germain*, if not under those of *Trianon* and *Riga*. The option delay under Article 78 of the St. Germain Treaty is fixed at a period within *one* year of the coming into force of the Treaty (i.e. before October 22, 1921) and not two years, as under the Treaty of Versailles. In the paragraph of Article 3 relating to the transfer of residence after option, the words "except where it is otherwise provided in the Treaty of Peace with Germany," clearly refer to the Treaty with Austria (St. Germain), if not to those with Hungary and Russia. Finally, where Article 3 provides that persons over eighteen years of age will be entitled "to opt for any other nationality which may be open to them," it can only refer to Article 80 of the St. Germain Treaty. This article lays down that persons acquiring Successor State nationality, other than Austrian under Article 70, may opt for the nationality of such Successor States as the majority of which are of the same race and language.

In other words, if Article 3 of the Polish Treaty is made subject to Articles 78 and 80 of the St. Germain

Treaty,[1] ex-Austrian nationals having become Poles under Article 3 may opt under the same either for the State in which they had their *previous indigénat* or for the Successor State of which they would form part of the majority by race and language, i.e. Czechoslovakia, Rumania, etc. And it should be noted furthermore that Poland is as much a Successor State of the ex-Austro-Hungarian Empire as are Czechoslovakia, Rumania, Jugoslavia, and Italy. There is no reason whatever to suppose that it was purposed that the non-Polish populations of Austro-Hungarian Poland should be denied the option rights enjoyed by similar minority populations in the dismembered territories of the old Empire.

If the principle of *Indigénat* can become operative under the option paragraph of Article 3 of the Polish Treaty, why should it not become operative also under that paragraph of Article 3 which relates to *ipso facto* acquisition of Polish nationality? In other words, if Article 3 is made subject in its option clauses to Article 78 of the St. Germain Treaty, why should it not be made subject to Article 70 of that Treaty, under which Polish nationality can be acquired *ipso facto* through the possession of *indigénat* in Polish territory on or before October 22, 1920?

The reply is that Article 3 of the Polish Treaty refers to residence only and not to *indigénat*. The Treaty text is

[1] Article 77 of the St. Germain Treaty (Art. 62, Trianon) also concerns Poland, inasmuch as it provides that, failing acceptance by Jugoslavia and Czechoslovakia under Article 76 (Art. 62, Trianon), persons *ipso facto* acquire the nationality of the State in which the *previous indigénat* was acquired. See also Article 74 regarding Italy.

here clearly at fault, and although the words "became resident" do not necessarily imply "habitual residence" and may, with a stretch of the imagination, refer as easily to *indigénat*, which requires residence among other conditions, the defect nevertheless remains. The cause for this Treaty defect, as also for the defect *relating to the absence of reference to Treaties with Hungary and Russia*, lies in the fact that when the Versailles Peace Treaty and the Polish Minorities Treaty were signed (June 28, 1919), neither the St. Germain (September 10, 1919) nor the Trianon (January 4, 1920) nor the Riga (March 18, 1921) Peace Treaties had as yet come into being. It is more than likely that those who drafted the Polish Treaty were unaware at the time of the existence even of the principle of *Indigénat*. It must be remembered that the territories of East Galicia continued throughout the years 1919 and 1920 to be the arena of a series of sanguinary military engagements in which Polish, White Russian, Balahovitch, Ukrainian, and Russian Soviet armies advanced and retreated.[1] The Polish frontier lines with Russia had not yet been established, and those with Rumania and Czechoslovak sub-Carpatho-Russia had been barely traced.

It has been said that it was at the instance of the Austrian delegation to the Peace Conference that the principle of *Indigénat* was inserted, in place of that of Habitual Residence, into the text of the St. Germain Treaty. That this should be the case would not be entirely

[1] The Author was in these territories at the time, and can vouch for the fact that access to this area for purposes of research was almost impossible for non-combatant foreigners.

unnatural, since the principle of *Heimatsrecht* in the old Empire was Austrian in origin, and was more strictly applied in that part of the Empire which is Austrian today than in the territories that have become Hungarian, Polish, Czechoslovak, Rumanian, Jugoslav, or Italian.[1] Furthermore, under the Austrian Federal Laws of July 30, 1925, June 8, 1927, and December 20, 1928, the principle of *Heimatsrecht* still continues to replace that of Habitual Residence.

By inserting this principle in the Treaty texts of the *Czechoslovak*, *Jugoslav*, and *Rumanian* Minorities Treaties, as also in the nationality provisions of the *St. Germain* and *Trianon* Peace Treaties, the Allied experts, "overlooking" the provisions of the first paragraph of Article 3 of the Polish Minorities Treaty, believed rightly or wrongly that they were applying a principle which had been in general use throughout all the territories of the dismembered Empire. To substantiate our argument further, it should be noted that the Treaty of Trianon with Hungary also concerns Poland, and that its Article 61 coincides with that of Article 70 of the St. Germain Treaty. But if Article 3 of the Polish Treaty should, as we believe, be made subject to Article 70 of the St. Germain Treaty, it continues nevertheless to be made subject to Article 91 of the Versailles Treaty, and its provision for habitual residence at an unspecified date for Austrians, Hungarians, and Russians continues to be applicable.

[1] See the chapter on the origin and principle of *Indigénat* or *Heimatsrecht* in the territories of the Austro-Hungarian Empire.

In other words, *under Article 3 of the Polish Minorities Treaty*—

(*a*) Habitual residence prior to or on January 1, 1908, is applicable to *German* nationals of Poland.

(*b*) Habitual residence (at no specified date) or *indigénat* on or before the dates of the coming into force of the Polish Minorities and St. Germain Treaties respectively are applicable to *Austrian* nationals of Poland.

(*c*) Habitual residence (at no specified date) is applicable to *Hungarian* and *Russian* nationals of Poland.

If under the Treaty of Trianon (Art. 61) the principle of *Indigénat* becomes also applicable to Hungarian nationals of Poland, and if despite the Treaty of Riga the Russian principle of "community, caste, or class registration" is still applicable to the Russian nationals of Poland,[1] these two facts *can in no way infringe upon the provisions of Article 3 under which the principle of Habitual Residence alone is applicable to these nationals of Poland.*

The option clauses of Article 3 of the Polish Treaty, where *Germans* are referred to, are made subject to Article 91 of the Versailles Treaty; where Austrians are referred to they are made subject to Articles 78 and 80 of the St. Germain Treaty. Under Article 81 (St. Germain), Poland, as a Successor State of the Austro-Hungarian Empire, undertakes to set no obstacle in the way of the exercise of such right of option under Articles 78 and 80. The corresponding option articles (63 and 64) of the Trianon Treaty are applicable to

[1] The nationality provisions of the Treaty of Riga are dealt with in Chapter VIII.

Hungarians having acquired Polish citizenship, and under Article 65 Poland undertakes to recognize the option rights provided for under Articles 63 and 64. But Article 3 of the Polish Treaty, unhappily, makes no reference to any Treaty to be concluded with Hungary, and the "said Treaties" are clearly only those concluded with Germany at Versailles and with Austria at St. Germain. Strictly speaking, therefore, Article 3 does not provide for the right of option for Hungarians or Russians who have acquired Polish citizenship.

*From the foregoing conclusions the defective character of Article 3 of the Polish Minorities Treaty is quite apparent, and it is not surprising, as will be seen later, that its provisions should have been made the subject of a considerable degree of controversy.*[1]

*Article 4* of the Polish Minorities Treaty applies the principle of *Qualified Birth* and reads as follows:

> "Poland admits and declares to be Polish nationals *ipso facto* and without the requirement of any formality persons of German, Austrian, Hungarian,

[1] See Chapter VIII regarding Interstate Conventions. Germano-Polish Convention of Vienna, August 30, 1924 (Art. 4, par. 1–3). See also Chapter IX regarding State Laws and Decrees. Polish Nationality Law of January 20, 1920. Order of June 7, 1920. Regulations of July 13, 1920, and Order No. 540 of August 11, 1920. Constitution of March 17, 1921. See also Simon Rundstein, *La loi polonaise de 1920 sur la nationalité* (Pamphlet, 1924), and A. de Lapradelle, *La loi polonaise de 1920 sur la nationalité et les Traités de Versailles* (Paris, 1924).

or Russian nationality who were *born* in the said territory of *parents habitually resident there*, even if at the date of the coming into force of the present Treaty they are not themselves habitually resident there.

"Nevertheless, within two years after the coming into force of the present Treaty, these persons may make a declaration before the competent Polish authorities in the country in which they are resident, stating that they abandon Polish nationality, and they will then cease to be considered as Polish nationals. In this connexion a declaration by a husband will cover his wife, and a declaration by parents will cover their children under eighteen years of age."

The principles of Birth and Habitual Residence of Parents (Qualified Birth) are alone applicable under this article. *The possession of indigénat is not required in the case of the parents.* This fact gives further weight to the conclusion reached with regard to the first paragraph of Article 3, namely, that habitual residence suffices, as a criterion, for the acquisition of Polish nationality by Austrian, Hungarian, and Russian nationals of Poland.

*Under Article 5,*

"Poland undertakes to put no hindrance in the way of the exercise of the *right* which the persons concerned have under the Treaties concluded or *to be concluded* by the Allied and Associated Powers with Germany, Austria, Hungary, or Russia, to choose whether or not they will acquire Polish nationality."

The above provision should be regarded as sub-

stantiating and extending the option rights provided for in Article 3. The application of the option paragraphs of Article 91 of the Versailles Treaty and of the option Articles 78 and 80 of the St. Germain Treaty is *substantiated*; the option rights contained in Article 3 are herewith *extended* to those provided for under Articles 63 and 64 of the Trianon Treaty and to the option provisions of the Treaty of Riga.

*Article 6*, applying the principle of *Ordinary Birth*, reads as follows:

> "All persons born in Polish territory who are not born nationals of another State shall *ipso facto* become Polish nationals."
>
> N.B.—Italics by the Author.

In the French text of the equivalent article of the Czechoslovak, Rumanian, and Greek Minorities Treaties, we find for "born nationals" the words "*nationalité de naissance.*" In the French text of Article 6 of the Polish Treaty, however, the words "*de naissance*" are missing. This may be due to an *oversight*, and we may conclude from the same that the English text in this instance was in all probability the original. It is just possible that such priority of the English text over the French may have been responsible for the confusion arising out of the words "became resident" (French text: "*domiciliés*"), in the first paragraph of Article 3.

A "born national" may not necessarily be in the same legal position *vis-à-vis* Civil or Municipal Law as a "national by birth." A British-born subject need not necessarily have been born in British territory, and even if he

and his father were born outside British territory, he is a British-born subject if his grandfather was born in British territory. In such cases it is the principle of *Descent* that is applied. Thus British subjects are either British-born or British-naturalized. Native-born citizens of the United States may have been born outside the limits of the United States; it is sufficient that their fathers should have been resident at one time in the United States.[1] Thus United States citizens are either United States born or United States naturalized. It would seem, therefore, that the words *born nationals* in the English text of Article 6 of the Polish Treaty should read as implying *nationals by descent or by parentage at the time of birth*, and not nationals by birth. If this construction is correct, it follows that the French text of Article 6 of the Minorities Treaties other than that signed by Poland is misleading.

Such a construction set to the words *born nationals* would be of great importance, for it supplies far more liberal opportunities for nationality acquisition than the *restricted* criterion of *nationality by birth*. If effectively applied, it would enable all persons born in Poland who were not nationals of another State by *descent or parentage at the time of their birth* to acquire Polish nationality *ipso facto*, and would reduce to a minimum the number of cases of statelessness. On the other hand, the setting of such a construction, or indeed of any construction, to the words *born nationals*, must necessarily involve the occur-

[1] See Moore's *Digest of International Law*, III. Also U.S. Law of February 10, 1855, as re-enacted in Revised Statutes, 1878, Section 1993.

rence of double nationality on a large scale, especially where naturalized persons are concerned.

This Article 6 has also given rise to comment and controversy, as will be seen later on in this work.[1]

The particular advantage derived from the foregoing study of the provisions of Articles 3–6 of the Polish Minorities Treaty lies in the fact that it will facilitate to a great extent the study that now remains to be made of the corresponding nationality articles contained in the Minorities Treaties signed by Czechoslovakia, Jugoslavia, and Rumania. By attempting to apply the conclusions that we have reached regarding the Polish Treaty articles to the articles of these Treaties, we will be approaching the nationality situation arising out of the dismemberment of the Austro-Hungarian Empire in a spirit consistent with what the Treaties themselves no doubt proposed to achieve.

The points that should be borne in mind are:

(*a*) That the principle of Habitual Residence suffices in itself for *ipso facto* nationality acquisition in the territories outside the limits of the Old Empire;

(*b*) That the principle of *Indigénat* applies in a general way to all the territories of the Old Empire;

(*c*) That the principle of *Indigénat* is not applicable to those areas of the Old Empire in which it was never

[1] See Chapter VIII regarding Interstate Conventions. Austro-Czechoslovakian Convention of Brunn, June 7, 1920, and the Rome Convention of April 6, 1922. See also Chapter IX on State Laws and Decrees and Polish Nationality Law of January 20, 1920.

known and the principle of Habitual Residence is applicable to such areas;

(*d*) That except where the choice between either principle, i.e. Habitual Residence or *Indigénat*, is rendered obviously impossible through specified Treaty provisions, *either principle is applicable*, with the reservation that *Indigénat* has precedence over Habitual Residence in order of merit in the territories that originally formed part of the Austro-Hungarian Empire;

(*e*) That where specified Treaty provisions require that *indigénat* should be possessed at a date considerably earlier than that required in the case of habitual residence, the principle of Habitual Residence at the time of the coming into force of the Treaty cannot be applied *ipso facto*;

(*f*) That in the qualified birth clauses (Article 4 of the above-mentioned Treaties), the principle of Habitual Residence should be applicable to the parents and not *Indigénat*;

(*g*) That the option rights under these Treaties are usually exercised on the basis of *indigénat*, and not on that of habitual residence in the territories of the ex-Austro-Hungarian Empire;

(*h*) That in the ordinary birth clauses of these Treaties (Art. 6) for *born national* one should read *national by parentage or descent at the time of birth.*

The CZECHOSLOVAK MINORITIES TREATY (September 10, 1919, in force as from July 16, 1920, placed under League of Nations guarantee November 29, 1920) was concluded in pursuance of Article 86 of the Versailles Treaty and

Article 57 of the St. Germain Treaty. It is not provided for in the Trianon Treaty.

Article 3 (first paragraph) is made subject to the *special* provisions regarding nationality contained in the Treaties with Germany, Austria, and Hungary. The *special* provisions are the following: Versailles Treaty, Articles 84 and 85; St. Germain, Article 76; and Trianon, Article 62. The Versailles Treaty articles provide only for the principles of Habitual Residence and Right of option. Germans "habitually resident" in any of the territories recognized as forming part of the Czechoslovak State will obtain Czechoslovak nationality *ipso facto* and *lose* their German nationality (Art. 84). Thus no specified date for habitual residence is laid down for the German nationals concerned. The reciprocal option rights provided for in Article 85 refer to habitual residence only. The St. Germain and Trianon Treaty articles provide only for the principle of *Indigénat*. To be effective such *indigénat* must be possessed *on or before January 1, 1910*. Persons possessing *indigénat* in Czechoslovak territory *after* that date can only acquire Czechoslovak nationality through special permission. On the other hand, where Article 3 of the Czechoslovak Treaty reads: "Czechoslovakia admits and declares to be Czechoslovak nationals *ipso facto*, and without the requirement of any formality, German, Austrian, or Hungarian nationals *habitually, resident or possessing rights of citizenship*[1] (*pertinenza, Heimatsrecht*),[2] as the case may be, at the time of the coming into force of the Treaty." One might at first sight be led to conclude that either principle would be effective. But Article 3, being

[1] French text *indigénat*. [2] Italics by the Author.

made *subject* to the above-mentioned Treaties, we are compelled to reach the following conclusion: That the words "as the case may be" imply that the principle of Habitual Residence is applicable to the German nationals of Czechoslovakia, and that the principle of *Indigénat* is applicable to the Austrian and Hungarian. The date fixed for *indigénat* possession at January 1, 1910, is far too stringent to permit of any interpretation being set to the Treaty text in the sense of equality or free choice between the two principles. The unhappy and even disastrous results of this restrictive nationality measure, similarly applied under Article 3 of the *Jugoslav Minorities Treaty*, are referred to further on in this work.[1]

The option paragraphs of Article 3 coincide with those contained in Article 3 of the Polish Treaty. The articles envisaged are: Versailles, 85; St. Germain, 78 and 80; and Trianon, 63 and 64.

Article 4, relating to Qualified Birth, differs from the equivalent article of the Polish Treaty, inasmuch as it refers to the *indigénat* of parents as well as to their habitual residence. The words, "as the case may be," contained in Article 3, are here repeated, and it would therefore be reasonable to conclude once again that habitual residence refers to German nationals and *indigénat* to Austrian and Hungarian.

Under Article 5 Czechoslovakia undertakes (as does Poland in Article 5 of the Polish Treaty) to put no hindrance in the way of the exercise of the right which

[1] See Chapter VII regarding the origin of the principle of *Indigénat*, etc., and also Chapter VIII on Interstate Conventions and Chapter IX on State Laws and Decrees.

persons have under the Treaties with Germany, Austria, and Hungary to choose whether or not they will acquire Czechoslovak nationality. Article 6 should be interpreted (as in the case of Article 6 of the Polish Treaty) as reading that all persons born in Czechoslovakia, who have not acquired Czechoslovak nationality through any other method provided for by the Treaties, and who are not nationals by *descent or parentage when born* of another State, shall *ipso facto* become Czechoslovak nationals.[1]

The YUGOSLAV MINORITIES TREATY, signed on September 10, 1919, in force as from July 16, 1920, and placed under the guarantee of the League of Nations on November 29, 1920 (same date as the Czechoslovak Treaty), was concluded in pursuance of Article 51 of the St. Germain Treaty and Article 44 of the Trianon Treaty, according to which Jugoslavia (as did Poland and Czechoslovakia) agreed to embody in a Treaty with the Principal Allied and Associated Powers "such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language, or religion."

As in the case of the Czechoslovak Treaty, Article 3, paragraph 1 of this Treaty is made subject to *special* provisions of certain Treaties. Here the Treaties are those of St. Germain, Trianon, and Neuilly (with Bulgaria). The special provisions are the following: St. Germain, Article 76; Trianon, Article 62; and Neuilly, Articles 39 and 40. Under the Neuilly Treaty articles Jugoslav nationality will be acquired *ipso facto*, to the exclusion

[1] See Chapter VIII on Interstate Conventions and Austro-Czechoslovak, Brunn, June 7, 1920.

of Bulgarian nationality, by Bulgarians *établis*,[1] not *domiciliés*, in territories attributed to Jugoslavia, prior to January 1, 1913; if *établis* later than that date they can only acquire Jugoslav nationality with special permission of the Jugoslav State. The option rights as between Bulgarian and Jugoslav nationals are reciprocal, as in the case of German and Czechoslovak nationals under Article 85 of the Versailles Treaty. But where no specified date for habitual residence was laid down for the Germans of Czechoslovakia, a restriction is set in the case of the Bulgarians of Jugoslavia. The St. Germain and Trianon Treaty articles provide only for the principle of *Indigénat*. To be effective such *indigénat*, as in the case of the Czechoslovak Treaty, must be possessed *on or before January 1, 1910* (Art. 76 of the St. Germain and Article 62 of the Trianon Treaty). Persons possessing *indigénat* in Jugoslav territory *after* that date can only acquire Jugoslav nationality through special permission.

The same conclusion, as reached in the Czechoslovak Treaty, must be reached here with regard to Article 3, paragraph 1, of this Treaty, namely: That the words "as the case may be" imply that the principle of Habitual Residence is applicable to the Bulgarian nationals of Jugoslavia, and that the principle of *Indigénat* is applicable, as a rule, to the Austrian and Hungarian. The date fixed for *indigénat* possession at January 1, 1910, is far too stringent to allow for the operation of the principle of Habitual Residence as an alternative criterion for the acquisition of nationality.

[1] *Établis* would seem to be a more accurate rendering of "habitually resident" than *domiciliés* (Author).

On the other hand, in areas where the principle of *Indigénat* has never been known, such as in old Bosnia-Herzegovina,[1] the principle of Habitual Residence should be, in all justice, considered as applicable to the inhabitants of those territories.

The conclusions drawn with regard to Articles 4, 5, and 6 of the Czechoslovak Minorities Treaty are applicable to the corresponding articles of this Treaty.

The RUMANIAN MINORITIES TREATY, signed on December 9, 1919, in force as from September 4, 1920, and placed under the guarantee of the League of Nations on August 30, 1921, was concluded in pursuance of Article 60 of the St. Germain Treaty and Article 47 of the Trianon Treaty.

As in the case of the Czechoslovak and Jugoslav Treaties, Article 3, paragraph 1 is made subject to the *special* provision of certain Treaties. The Treaties here are those concluded at St. Germain and Trianon. *Neither* of these Treaties, however, contain *special* provisions relating to the acquisition of *Rumanian* nationality. Articles 76, St. Germain, and 62, Trianon, refer expressly to Czechoslovakia and Jugoslavia, *and not to Rumania.* The text of Article 3 is therefore defective in the English rendering at least. The French text reads, "sous réserve des Traités ci-dessous mentionnés" and the Italian, "con riserva dei Trattati che seguono." Seeing that the Peace Treaties referred to contain articles of a *general character* only that could be applicable to Rumania, we

[1] See Chapter VII regarding the origin and application of the principle of Rights of Citizenship in the territories of the ex-Austro-Hungarian Empire.

must accept the French and Italian texts as the authentic and the English as defaultive. The articles thus envisaged by Article 3 would, in the first instance, be Article 70 of the St. Germain Treaty and Article 61 of the Trianon Treaty.

According to these articles the criterion for the acquisition of Rumanian nationality is not that of habitual residence, as in Article 3, but that of *indigénat*. Which of the two principles has therefore precedence, that contained in the Minorities Treaty or that contained in the two Treaties of Peace? Articles 70 and 61 are general in character and refer—as far as the criterion itself is concerned—to all the territories of the ex-Austro-Hungarian Empire. Article 3 of the Czechoslovakian and Jugoslav Minorities Treaties takes formal cognizance of this fact, inasmuch as they relate to persons "habitually resident or *possessing rights of citizenship* (*pertinenza, Heimatsrecht*), as the case may be." Article 3 of the Rumanian Treaty makes *no formal provision for such an alternative*; it refers to habitual residence only, and even *emphasizes* the fact that the only persons to whom the criterion for *ipso facto* acquisition of Rumanian nationality is applicable are those who were nationals of Austria and Hungary at the time of the coming into force of the Treaty. This is clear from the text, where we read that Rumania accepts as Rumanian nationals *ipso facto* and without any formality "all persons habitually resident at the time of the coming into force of the present Treaty within the whole territory of Rumania, including the extension made by the Treaties of Peace with Austria and Hungary or any other extension which may hereafter be made, *if such persons are not at*

*that date nationals of a foreign State other than Austria or Hungary.*"[1] In other words, the provisions of Article 3 are *not* applicable to Rumanians, Russians, Bulgarians, etc., who were Rumanian, Russian, or Bulgarian nationals, or nationals of a State other than Austria or Hungary when the Treaty came into force. The criterion of habitual residence only applies to ex-Austro-Hungarian nationals or to persons without nationality. This being so, what purposes would it have served to invest these millions of persons with the right of acquiring Rumanian nationality through the mere fact of habitual residence in Rumanian territory, if in the end the criterion of *indigénat* had been intended to prevail? We can understand distinctions made in the Polish, Czechoslovak, and Jugoslav Minorities Treaties, where the interests of German or Bulgarian nationals are safeguarded, but we cannot understand them here, where Article 3 is not even applicable to the Russian nationals of Bessarabia,[2] or to the Bulgarian and Turkish nationals of the Dobroudja.

The conclusion that we reach is therefore the following: That Article 3 of the Rumanian Treaty refers only to nationals of the ex-Austro-Hungarian Empire; that habitual residence at the date of the coming into force of the Treaty suffices for the *ipso facto* acquisition of Rumanian nationality by *ex-Austro-Hungarian nationals*

[1] It has been suggested that these words cover stateless persons also, and not only ex-Austrian and Hungarian nationals. Such an interpretation is not only ingenious, but would seem to be correct. The position of stateless persons is dealt with farther on. Italics by the Author.

[2] See Chapter VIII relating to Interstate Treaties, etc., Bessarabian Treaty of October 8, 1920.

throughout the territories of Rumania, including Old Rumania, the territories acquired from Austro-Hungary, Bessarabia, and the Dobroudja; that ex-Austro-Hungarian nationals *not habitually resident* in Rumanian territory acquire Rumanian nationality *ipso facto* under Article 70 of the St. Germain and Article 61 of the Trianon Treaty, and to the exclusion of either Austrian or Hungarian nationality, if possessing rights of citizenship (*indigénat*) in any commune of the Rumanian State.

Much controversy has arisen out of the interpretations set to this article.[1] The same conclusions hold as regards Articles 4, 5, and 6 of this Treaty as were reached with respect to the equivalent articles of the Polish, Czechoslovak, and Jugoslav Minorities Treaties.

Under *Article 7*, "Rumania undertakes to recognize as Rumanian nationals *ipso facto* and without the requirement of any formality Jews inhabiting any Rumanian territory who do not possess another nationality."

For the English "inhabiting" we find "*habitant*" in the French text and "*che risiedono*" in the Italian. Thus habitual residence in Rumania is not required for the Jews for the *ipso facto* acquisition of Rumanian nationality. This is the only nationality clause strictly concerning Jews to be found in the Treaties to which this work refers. This article owes its existence to the fact that the Jews of Rumania were never in general regarded as possessing Rumanian nationality. The insertion of this clause is one of the happier features of this Treaty.

The nationality articles applicable to AUSTRIA and

[1] See Chapters VIII and IX relating to Interstate Conventions and State Laws and Decrees.

HUNGARY are contained in the sections concerning Minorities Protection of the Treaties of St. Germain and Trianon respectively. Under these articles, Austrian and Hungarian nationality are acquired *ipso facto* in two ways: firstly, through the possession of *indigénat* at the date of the coming into force of the Treaty, if not nationals of another State (St. Germain, Article 64; Trianon, Article 56); secondly, through *descent or parentage when born*—"born nationals" (Art. 65, St. Germain, and Art. 57, Trianon). Neither Austrian nor Hungarian nationality can be acquired through habitual residence. *No provision is made in either case for qualified birth or the right of option.*

The St. Germain Treaty was signed on September 10, 1919, and these articles were placed under the guarantee of the League of Nations on October 22, 1920. The Trianon Treaty was signed on June 4, 1920, and placed under the guarantee of the League of Nations on August 30, 1921.

*These two Treaties close the list of Treaties signed by the Principal Allied and Associated Powers with the Successor States of the old Austro-Hungarian Empire. Henceforward the field will be very much clearer, since the principle of Indigénat does not figure in the Minorities Treaties and Declarations that remain to be examined.*

The nationality articles applicable to BULGARIA are contained in the section of the *Neuilly Treaty* relative to minorities protection. Under these articles, Bulgarian nationality is acquired *ipso facto* in two ways: firstly, through *habitual residence* within Bulgarian territory at the date of the coming into force of the Treaty, if not

nationals of another State (Art. 51), and secondly, through *descent or parentage when born*—"born nationals" (Art. 52). *No provision is made for either qualified birth or for the right of option.*

The Treaty of Neuilly was signed on November 27, 1919, and these articles were placed under the guarantee of the League of Nations on October 22, 1920.[1]

The GREEK MINORITIES TREATY, in pursuance of Article 46 of the Neuilly Treaty, was confirmed at Lausanne on July 24, 1923, and came into force as from August 30, 1924.

Article 3, paragraphs 1 and 2, read as follows:

> "Greece admits and declares to be Greek nationals *ipso facto* and without the requirement of any formality Bulgarian or Turkish (or Albanian) nationals habitually resident at the date of the coming into force of the present Treaty in territories transferred to Greece by Treaties subsequent to January 1, 1913.
>
> "Nevertheless the persons referred to above who are over eighteen years of age will be entitled under the conditions contained in the said Treaties to opt for any other nationality which may be open to them, etc."

The "*Treaties subsequent to January 1, 1913*," include those signed at Neuilly (November 27, 1919), at Sèvres

[1] As regards Articles 44 and 45 of the Neuilly Treaty concerning the nationality of the inhabitants of Thrace, see Article 3 of the Treaty between the Principal Allied Powers and Greece relative to Thrace, signed at Sèvres August 10, 1920, and the original Greek Minorities Treaty of the same date. See also Chapter VIII, Interstate Conventions, Greco-Bulgarian Voluntary Emigration Commission.

(concerning Thrace, August 10, 1920), and Lausanne (July 24, 1923). The Treaty regarding Thrace, signed at Sèvres, was confirmed by the Principal Allied Powers and Greece at Lausanne, modifications being made to the territorial provisions of the Sèvres Treaty in the light of Article 2 (2) of the Lausanne Treaty with Turkey. The nationality Article 3 of the Sèvres Treaty regarding Thrace and thus confirmed at Lausanne reads as follows: "The provisions of Articles 44 and 45 of the Treaty of Peace with Bulgaria relating to the nationality of the inhabitants will apply to the territories referred to in Article 1 of the present Treaty." Under the said Article 1: "The Principal Allied and Associated Powers hereby transfer to Greece, who accepts the said transfer, all rights and titles which they would hold, under Article 48 of the Treaty of Peace with Bulgaria signed at Neuilly on November 27, 1919, over the territories in Thrace which belonged to the Bulgarian Monarchy and are dealt with in the said article."

According to the above-mentioned Article 48 of the Neuilly Treaty, Bulgaria undertook to recognize any measures that might be taken by the Allied and Associated Powers regarding the nationality of the inhabitants of the territories of Thrace.

Articles 44 and 45 of the Neuilly Treaty, to which Article 3 of the Sèvres Treaty is made subject, and to which, in consequence, Article 3 of the Greek Minorities Treaty refers, can be summarized as follows: "Greek nationality is acquired *ipso facto* to the exclusion of Bulgarian nationality by Bulgarian nationals inhabiting (*établis*) the territories attributed to Greece prior to January 1, 1913; if inhabiting these territories later than

that date, they can only acquire Greek nationality with the special permission of Greece (Art. 44). Such persons may opt for *Bulgarian* nationality within two years of the coming into force of the Treaty (Art. 45).

Thus, where Article 3 of the Greek Minorities Treaty requires *habitual residence* for *ipso facto* acquisition of Greek nationality by Bulgarians, Turks, or Albanians of Greece, under Article 44 of the Neuilly Treaty to which it refers, the fact that one *inhabits* the *territories acquired* by *Greece* is all that is required for the acquisition of Greek nationality. In other words, *ordinary residence* should suffice in territory acquired by Greece from *Bulgaria*, whilst *habitual residence* is acquired elsewhere. This interpretation of Article 3 would seem to be particularly reasonable, as it would be exceedingly difficult to supply evidence of habitual residence prior to January 1, 1913, in such a turbulent area as is the Macedonian, for example.[1] As regards the right of option, Article 45 of the Neuilly Treaty only provides for option by Bulgarians, Greek nationals, for Bulgarian nationality, whilst Article 3 of the Greek Minorities Treaty refers to Bulgars, Turks, and Albanians who are Greek nationals and provides for their right of option *for any other nationality which may be open to them under the conditions contained in the said Treaties*. Thus Article 45 of the Neuilly Treaty covers Bulgarians, Greek nationals, opting for Bulgarian nationality, and Greek and Bulgarian nationals opting for Greek nationality; whilst Turks, acquiring or possessing

[1] It should be noted in this respect that Article 39 of the Neuilly Treaty refers to Bulgars *établis* on Yugoslav territory. P. 125.

Greek nationality, may opt for Turkish nationality *under Articles 31 and 34*[1] *of the Lausanne Treaty*, or if they are not Turks *by race*, may opt for such a State as the majority of which is of their race, subject to the consent of that State (Art. 32[1] of the Lausanne Treaty). As regards the Albanians of Greece, these, if *Turkish by race*, may opt for Turkish nationality under Article 32[1] of the Lausanne Treaty, subject to Turkey's consent. Their option rights *vis-à-vis* Albania and those of the Greeks of Albania *vis-à-vis* Greece are determined by the *Albano-Greek Convention of Athens of October 13, 1926.*[2]

The Qualified Birth *Article 4* of the Greek Treaty refers to Bulgarian and Turkish nationals entitled to Greek nationality *but not to Albanian.* This is obviously a Treaty defect and it is not expressly remedied, as will be seen later, under the Athens Convention of October 13, 1926. The position of the Albanians in Greece has in fact given rise to a great deal of dissatisfaction and unrest; their position has been made the subject of a large number of petitions addressed to the League of Nations, and this question, as is explained in another chapter, has been yet further complicated by the measures taken as regards the compulsory exchange of Greeks from Asia Minor and Moslems from Greece, as provided for under the Treaty of Lausanne.

Having examined the nationality provisions of the

[1] See Chapter VI regarding conclusions concerning the nationality provisions of the Peace Treaties (Turkey).

[2] See Chapter VIII relating to Interstate Treaties and Conventions.

Minorities Treaties signed by the States of Europe, there now remain those contained in the MINORITIES DECLARATIONS to be considered.

These Declarations were signed or made by the following States: Finland (relative to the Aaland Islands only), Albania, Lithuania, Latvia, and Estonia, and by virtue of the following resolution passed by the First Assembly of the League of Nations on December 15, 1920:

> "In the event of Albania, the Baltic, and the Caucasian States being admitted to the League, the Assembly requests that they should take the necessary measures to enforce the principles of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect."

What is particularly noteworthy about these Declarations is that the obligations contracted by the States in question were formally undertaken in the presence of the Council of the League, and did not take the shape of Treaties contracted with the Principal Allied and Associated Powers.

The Declaration made by *Finland* (in force as from October 2, 1921) concerns the Swedish population of the Aaland Isles. *No nationality provisions figure in the Declaration.* As regards the position of other minorities in Finland, the Council, on the basis of a detailed memorandum submitted by the Finnish Government, felt that the constitutional and legislative guarantees given therein were satisfactory.[1] In this connexion attention should be

[1] For the Nationality Laws of the Baltic States see Chapter IX, State Laws and Decrees.

drawn to this interesting "memorandum on the rights and legal status of minorities in Finland," with annexes submitted to the Council by the Finnish Government on June 16, 1921. The section dealing with the acquisition of Finnish nationality by Jews is particularly illuminating. (Council Document, C. 222, M. 161, 1921, I.)

The ALBANIAN DECLARATION, signed on October 2, 1921, and placed under the guarantee of the League of Nations on February 17, 1922, refers to nationality in its Article 3, which reads as follows:

> "All persons born in Albania who are not born nationals of another State shall *ipso facto* be Albanian nationals. Persons habitually resident in Albania before the War will be allowed, together with their wives and children under eighteen years of age, within two years from the date of this Declaration, to become Albanian citizens, if they make application to that effect.
>
> "Albanian nationals habitually resident at the coming into force of the Treaty between the Principal Allied and Associated Powers and Greece signed at Sèvres on August 10, 1920, in territories transferred to Greece by Treaties subsequent to January 1, 1913, shall be recognized as becoming Greek nationals *ipso facto* and without the requirement of any formality. Nevertheless they will have the right to opt for Albanian nationality as provided for in Article 3 of the said Treaty of Sèvres, and no hindrance shall be put in the way of the exercise of this right. This right must be exercised within one year of the coming into force of that Treaty.

> "Albania is prepared to comply with any recommendations which may be made by the Council of the League of Nations with respect to the reciprocal and voluntary emigration of persons belonging to ethnical minorities."

The particular reference made in the above article to the Greek Minorities Treaty (in force as late as August 30, 1924) requires some explanation. At the time of the negotiating of the Albanian Declaration, the Greek Government, considering it essential that Albania should be bound by a Minorities Treaty similar to those concluded between the Principal Allied and Associated Powers and several other States, proposed that the right to inform the Council of any violation or danger of violation of any of Albania's obligations should not be reserved solely for Members of the Council, as under the other Minorities Treaties, but should be granted also to Greece, as Greece was particularly concerned with the rights of Greeks in Albania. The Albanian Government objected to this proposal, and maintained that the extension of such a right to Greece would constitute an element of trouble and threaten to compromise the friendly relations which should exist between neighbouring States Members of the League, and that no kind of intervention, open or disguised, on the part of Greece in the internal affairs of Albania would ever be accepted. (See Council Document A. 176, 1921, I. C.361.) The root of the trouble lay, no doubt, in the unsettled state of the frontiers and in the aspirations of Greece to the territories of Northern Epirus or Southern Albania. The nationality problems, therefore,

threatened to be acute, especially where two States were faced with internal disorders of a grave nature and where the Greek Treaty signed at Sèvres continued to remain unratified. Strained relations between the two States were brought yet further to a head later on with the delimination of the frontier line and the massacre of General Tellini and his officers. The Greek Treaty was only ratified at Lausanne in August 1924. The Turko-Greek compulsory exchange[1] leading to the danger of the inclusion of Albanians in the lists led to yet further discontent. It was not until October 13, 1926, that a Convention was signed between Greece and Albania governing nationality acquisition.

The other paragraphs of Article 3 of the Albanian Declaration require no explanation at this stage.

The LITHUANIAN DECLARATION was signed before the Council of the League of Nations on May 12, 1922. It contains, as does the Polish Minorities Treaty, special articles referring to the Jews.[2] There is, however, only one nationality article (3), and this can be summarized as follows:

> "The Lithuanian Government will keep the Council informed as regards all constitutional or legislative measures taken with respect to the necessary conditions under which Lithuanian nationality is acquired. All

[1] See Chapter VIII regarding Interstate Conventions and Voluntary or Compulsory Exchange Agreements.

[2] For the activities of societies such as "Le Comité des délégations juives" at Paris and the Joint Foreign Committee of London, see Chapter XII regarding the activities of International Societies.

> persons born on Lithuanian territory after the date of the Declaration, and who are not born nationals of another State, are recognized as being Lithuanians."

To appreciate the meaning of this article in its fullest sense, it is necessary to revert to the negotiations that followed Lithuania's acceptance on September 14, 1921, of the Council's recommendations of December 15, 1920. The Council's *rapporteur*, the representative of Brazil, in his negotiations with the Lithuanian representative, explained that Lithuania should agree to accept obligations of a similar nature to those accepted by Poland, Rumania, Czechoslovakia, and Jugoslavia, in their Minorities Treaties. (Council Document C. 248, M. 144, 1922, I.) To this Lithuania agreed, and the nine articles of the Declaration do, in fact, almost wholly cover the field of obligations generally accepted in the Minorities Treaties. But whereas the above Treaties all contain nationality articles relating to habitual residence (or *indigénat*) and qualified birth, such provisions are missing here. Only the criterion of ordinary birth is here referred to. From the text of this article (3), however, it is clear that the Council of the League has the right to disapprove of such constitutional or legislative measures taken by the Lithuanian Government regarding nationality as are not in keeping with the spirit of the Declaration. It should be observed, furthermore, that the ordinary birth clause is applicable only to persons born in Lithuania *after the date of the Declaration. This is a singular departure from the corresponding birth clauses (6) of the Minorities Treaties, which apply, it would seem, to such persons only as were in*

*existence at the time of the coming into force of the Treaties.*[1] It will remain to be seen to what extent the Lithuanian Government has, in fact, kept the Council informed as regards the nationality legislation in force in Lithuania.

The LATVIAN DECLARATION, made before the Council on July 7, 1923, was finally approved on July 28, 1923. It contains no specific minorities articles and does not refer to nationality. The Declaration proposes that the negotiations between the Latvian Government and the Council of the League of Nations regarding the question of the protection of minorities in Latvia should be terminated. "The Council will, nevertheless, have the right to take up the question anew and to reopen negotiations *if the situation of the minorities in Latvia does not appear to it to correspond to the general principles laid down in the various so-called Minorities Treaties.*"[2] Furthermore, "The Latvian Government accepts in principle from this date the obligations to furnish the Council with any information which it may desire, should one of its members bring before it any question relating to the situation of persons belonging to racial, linguistic, or religious minorities in Latvia."

From the foregoing one must therefore conclude that Latvia recognizes as applicable in her territory the principles governing nationality acquisition contained in the Minorities Treaties, and that it suffices that a Member

[1] The question whether these birth clauses refer only to persons in existence at the date of the coming into force of the Treaties, or only to persons born after that date, has been made the subject of much discussion. This is referred to later on.

[2] Italics by Author. See Council Document A. 22, 1923, I.

of the Council intervenes to secure information as regards nationality issues, should these arise, and that such issues may in consequence be made the subject of negotiations as laid down by the Council procedure when dealing with minorities cases.[1]

The ESTONIAN DECLARATION, following upon a report dated August 28, 1923, and a previous Declaration dated September 13, 1921, was approved by the Council of the League of Nations on September 17, 1923. The negotiations between the Council and the Estonian Government had been protracted for a period of two years. The Council in its resolution takes note of the information supplied by the Estonian Government, according to which minorities rights are guaranteed under the Estonian Constitution in a manner *which conforms to the general principles governing* the protection of minorities. The Council will be entitled to consider afresh the status of minorities in Estonia "should the latter cease to enforce those general principles."[2]

The conclusions reached with regard to this Declaration are in general the same as those that we have drawn concerning the Declaration made by Latvia.

Before closing this chapter it should be noted that the procedure adopted by the League of Nations with regard to minorities petitions is applicable to all the Minorities Treaties and minorities articles contained in the Peace

[1] See Chapter XI regarding the League Council's procedure relative to minorities questions.

[2] See Council Documents A. 82, 1923, I; also A. 15, 1923, I, describing the protracted negotiations from 1921 to 1923 and text of Article 3 of the abandoned Declaration. (Similar to Article 3 of the Lithuanian Declaration.)

Treaties and to all the Declarations without exception. All nationality issues arising under these Minorities Treaties or Declarations are of international concern, and any violation or danger of violation of their provisions, as far as they affect minorities by race, language, or religion, automatically calls for the League Council's intervention.

Article 12 of the *Polish Minorities Treaty* adequately illustrates the position of the Council *vis-à-vis* the provisions of these Treaties and Declarations. It reads as follows:

> "Poland agrees that the stipulations in the foregoing articles, so far as they affect persons belonging to racial, religious, or linguistic minorities, constitute obligations of international concern, and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy, and Japan hereby agree not to withhold their assent from any modifications in these articles, which is in due form assented to by a majority of the Council of the League of Nations.
>
> "Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

"Poland further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Polish Government and any one of the Principal Allied and Associated Powers, or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final, and shall have the same force and effect as an award under Article 13 of the Covenant."

Similar articles are to be found in the Minorities Treaties signed by Czechoslovakia, Jugoslavia, Rumania, and Greece, in the Peace Treaties (minorities articles) of St. Germain, Trianon, and Neuilly, in the Albanian, Lithuanian, and Finnish (Aaland Isles) Declarations,[1] and the Latvian and Estonian Declarations expressly recognize the competence of the Council and of the Permanent Court of Justice.

[1] No reference to the Principal Allied and Associated Powers.

## CHAPTER VI

## CONCLUSIONS REGARDING THE NATIONALITY PROVISIONS OF THE MINORITIES TREATIES AND DECLARATIONS

UNDER the above Treaties and Declarations, the criteria most favoured for the *ipso facto* acquisition of nationality are those of *habitual residence* and *ordinary birth*. The principle of *Qualified Birth* is *not* applicable to Austrian, Hungarian, or Bulgarian nationals under the minorities articles of the St. Germain, Trianon, and Neuilly Peace Treaties respectively, and it is not referred to in the Albanian Declaration; it is not expressly referred to in any of the other Declarations, but its application—if the Polish Minorities Treaty can be rightly taken as a model for the Baltic States under their Declarations—is at all events implied.

The principle of Habitual Residence is definitely replaced by that of *Indigénat* in the minorities articles of the St. Germain, Trianon, and Neuilly Treaties. *Ordinary residence* suffices for the *ipso facto* acquisition of Rumania nationality by Jews (no specified date) and of Jugoslav and Greek nationality by Bulgarians (on specified dates). The principle of *Ordinary Birth* figures in all the Minorities Treaties and in the Albanian and Lithuanian Declarations; in the latter, however, the principle only applies to persons born after the date of the Declaration.[1]

As regards the Minorities Treaties signed by the

[1] This point is dealt with later on.

Successor States of the ex-Austro-Hungarian Empire and Greece, the provisions of these, as contained in their *Articles 3* (paragraph 1) are made subject to provisions or special provisions contained in the Treaties of Peace concluded between the Principal Allied and Associated Powers and Germany, Austria, Hungary, Bulgaria, and Turkey. Thus Article 3 (paragraph 1) of the Polish Treaty is made subject to *any provisions* contained in the Treaties of Peace with Germany or Austria respectively, relating to persons who *became resident* in Polish territory after a specified date; Article 3 (paragraph 1) of the Czechoslovak Treaty is made subject to the *special provisions* regarding nationality in Czechoslovakia contained in the Treaties of Peace with Germany, Austria, and Hungary; Article 3 (paragraph 1) of the Jugoslav Treaty is made subject to the *special provisions* contained in the Treaties of Peace with Austria, Hungary, and Bulgaria; Article 3 (paragraph 1) of the Rumanian Treaty is made subject to the *special provisions* (English text; French text, "*Traités*" only) regarding nationality in Rumania contained in the Treaties of Peace with Austria and Hungary; and Article 3 of the Greek Treaty is indirectly made subject to the *conditions* contained in the Treaties of Neuilly and Lausanne.

The *Declarations* are not made subject to provisions contained in any Peace Treaties, except where the Albanian Declaration relates to Albanians habitually resident in Greece and to such recommendations as may be made by the League's Council with regard to reciprocal and voluntary emigration.

In examining Article 3 (paragraph 1) of the Minorities

Treaties signed by the Successor States of the ex-Austro-Hungarian Empire, we have observed that under the Polish Treaty the determining factor is *Habitual Residence*; under the Czechoslovak Treaty the determining factors are either *Habitual Residence or Indigénat*, as the case may be; that under the Jugoslav Treaty the determining factors are either *Habitual or Ordinary Residence or Indigénat*; and that under the Rumanian Treaty the determining factor is *Habitual Residence*. These determining factors, coupled with those contained in the relevant Peace Treaty provisions, constitute the material upon which the application of the said Article 3 (paragraph 1) must be based.

We have ascertained, however, in Chapter V that in certain cases neither the provisions nor the special provisions exist in the Peace Treaties referred to; we have also concluded that even where they do exist, the criteria provided for in the Minorities Treaties continue to hold good. Thus, whether or no Article 70 of the St. Germain Treaty is considered as applicable to Austrian nationals of Poland, whether or no Article 61 of the Trianon Treaty applies to Hungarian nationals of Poland, whether or no Article 6 of the Treaty of Riga determines the status of Russian nationals of Poland, the fact remains that, *as far as the League of Nations is concerned*, Habitual Residence is the determining factor under Article 3 (paragraph 1) of the Polish Minorities Treaty for the *ipso facto* acquisition of Polish nationality by German, Austrian, Hungarian, and Russian nationals of Poland. Similarly, whether or no Article 70 of St. Germain and Article 61 of Trianon are applicable to Rumania, Habitual Residence remains the

determining factor under Article 3 (paragraph 1) of the Rumanian Treaty for the *ipso facto* acquisition of Rumanian nationality by ex-Austrian and Hungarian nationals in Rumania.

In the cases of Czechoslovakia and Jugoslavia, Articles 76 of St. Germain and 62 of Trianon, to which Article 3 (paragraph 1) of the two Minorities Treaties are made subject, are of so definite and stringent a character that there can be no room for hesitation as to the meaning of the texts. Habitual residence cannot be substituted for *indigénat*, nor can the latter replace the former. The principle of *Indigénat* in these two cases is the determining factor for the *ipso facto* acquisition of Czechoslovak and Jugoslav nationality by Austrians and Hungarians in these States.

It is clear, therefore, that from the standpoint of the League of Nations there is no common set of principles governing nationality acquisition applicable to the Successor States of the ex-Austro-Hungarian Empire.

The foregoing conclusions reached with regard to Article 3 (paragraph 1) of the said Minorities Treaties apply equally to their Article 4 concerning qualified birth; the same distinctions must be made between the Treaties. In this connexion it is only necessary to note at this stage the absence of reference to Albanians in Article 4 of the Greek Minorities Treaty.

The principal difficulties encountered in the study of the above-mentioned Minorities Treaties are those presented by their Article 3 (paragraph 1), and these difficulties are yet further enhanced by the option clauses of the said articles. A number of other articles contained in

the Peace Treaties are here introduced, and as these, in their turn, inevitably introduce the principle of *Indigénat*, the confusion becomes considerable. Furthermore, as will be seen later, several Interstate Conventions have added further to the confusion, and these, together with a series of State Laws and Decrees, present in the end a veritable cul-de-sac, from which, if once entered, it is difficult to return.

For the present, however, the point of importance to be established is that as far as the League of Nations is concerned the provisions of the Minorities Treaties and Declarations must be scrupulously respected, and that these "shall not be modified without the assent of the majority of the Council of the League of Nations."

As the principle of *Indigénat* (*Heimatsrecht*, *Pertinenza*) —Rights of Citizenship—figures largely in the Interstate Conventions and State Laws and Decrees with which we have yet to deal, an account of its origin and application in the territories of the ex-Austro-Hungarian Empire is given in the following chapter.

## CHAPTER VII

# THE PRINCIPLE OF *INDIGÉNAT* (*HEIMATSRECHT*, *PERTINENZA*), OR RIGHTS OF CITIZENSHIP[1]

*Its Origin and Application in the Territories of the ex-Austro-Hungarian Empire—Effect of its Application under the Provisions of the Peace Treaties of St. Germain and Trianon and the Minorities Treaties signed by the Successor States of the Dual Monarchy*

WHERE the Versailles, Neuilly, and Lausanne Treaties—for the *ipso facto* acquisition of nationality—lay down, in the first instance, the principles of Habitual Residence or Ordinary Residence, the Treaties relating to the Successor States of the ex-Austro-Hungarian Empire usually supplant that principle by that of Rights of Citzenship (*Heimatsrecht*, *Indigénat*, *Pertinenza*). The insertion of this principle into these Treaties has by many, if not by most, critics come to be regarded as a grave misfortune responsible for the great majority of the cases of statelessness and of double nationality that have arisen from the territorial changes affected through the Peace Treaties.

In view of the foregoing, a study of the origin of this principle and of its application in the ex-Austro-Hungarian Empire is here called for.

[1] The *Heimatsrecht* of the ex-Austro-Hungarian Laws and of the Treaties referred to is improperly translated into English. The translation should read "communal rights," and not "rights of citizenship." "Rights of citizenship" would be a fairly correct translation of *Staatsbürgerschaftsrecht*, implying the right to the possession of nationality (Author).

1. *Origin of the Principle.*—Approached from the standpoint of community rights, the origin of this principle is very ancient, and it has in fact been in use in Western and Northern Europe since the Middle Ages. (For example, under the German Emperor Charles V, in 1530, and under Henry VIII of England, 1536 . . . Poor Laws.) Its application was, however, limited entirely to questions of poor relief, where each community was made responsible for the support of its destitute members. The principle would never seem to have been extended to the sphere of nationality until 1865. (See Part I, p. 45.)

Such persons as thus obtained poor relief, or were entitled to obtain it, belonged to a particular community, and possessed in that community the so-called rights of citizenship or *Heimatsrecht*, which entitled them to support in the event of destitution. As a criterion for acquiring those rights, the principle of Origin or Descent (*jus sanguinis*) was first applied, but later on, as traffic and the displacement of populations increased, this principle was replaced by that of Habitual Residence.

On the other hand, a tendency arose in Central Europe to link up the issues accruing to the possession of such rights in matters of poor relief to issues of a wider nature, which led to military recruiting, and finally to a series of issues involving rights of citizenship. This tendency expressed itself in Bavaria, but mainly in the territories composing the ex-Austro-Hungarian Empire.

2. *Origin of its Application in the ex-Austro-Hungarian Empire.*—The principle of *Heimatsrecht* first came to be applied by law in *Austria* proper. Its seeds can be traced

in the earliest instance to the "*Allerhöchste Resolution*" of November 16, 1754, which, however, limited its application to questions of poor relief and vagabondage. On October 25, 1804, its application had extended to the sphere of military conscription and recruiting (*Konscriptions-und-Rekrutierungs-Patent*). On March 17, 1849, its application commenced to extend itself to the sphere of "communal rights" in the more complete sense of the term, where under the provisional *Gemeindegesetz* of that date the first conditions were laid down as regards community membership. On the heels of this provisional law there followed the *Gemeindegesetz* of April 24, 1859, to which can be traced the first Austrian Law relating to *Heimatsrecht* of December 3, 1863, from which the development of the principle as applied up to the late World War derives.[1] The *Heimatsgesetz* of December 1863 constitutes in fact the first landmark of real importance in the study of the application of this principle. This law was to a considerable extent modified by the *Heimatsgesetz-Novelle* of December 5, 1896, and that law again modified under the new Austrian Constitution of October 1, 1920, and under the Austrian Bundes-Gesetz of July 30, 1925.

As regards *Hungary* proper, the principle took the form of *Gemeindezugehörigkeit*, and was first definitely applied by law in 1886. This law still remains valid.[2]

As regards the *ex-Kingdom of Croatia-Slovenia*, the

[1] Dr. Karl Waldert, *Das Oesterreichische Heimat-und Staatsbürgerrecht*, etc., Vienna, 1926.

[2] Dr. Rolf Schmiedt-Sollislau, *Zur Frage der Staatslosigkeit*, p. 18.

*Landesgesetz* of April 30, 1880, constitutes the basis upon which the principle has been since applied.[1]

As regards *Bosnia-Herzegovina*, the principle has never been known and has never been applied, the *Landesstatute* of February 17, 1910 (laying down the conditions of *Landesangehörigkeit* in Bosnia and Herzegovina) making no provisions for *Heimatsrecht*.

3. *Application of the Principle of Heimatsrecht in*

(*a*) Austria.
(*b*) Hungary.
(*c*) Croatia-Slovenia.
(*d*) Bosnia-Herzegovina.

(*a*) *Austria.*

*Heimatsgesetz* of December 3, 1863. Austrian *Heimatsrecht* was first determined through the promulgation of this law which came into force on January 24, 1864, and in pursuance of the following article of the law of March 5, 1862:

Article 2: "Every *Staatsbürger* (State National) must be in possession of rights of citizenship (*Heimatberechtigt*) in a community. The conditions (*Heimatsverhältnisse*) will be determined by a special law."[2]

*Section I. General Provisions.*—This section lays down that the possession of rights of citizenship in a community is accompanied by guarantees in that community regarding the right of undisturbed residence and claim to poor relief (*Armenversorgung*); also that only *Staatsbürger* can acquire such rights of citizenship, that every *Staatsbürger*

[1] Dr. Sollislau.
[2] Dr. Karl Waldert.

must be *Heimatberechtigt* in some commune and only in one commune.

*Section II* lays down that such rights of citizenship are acquired by:

(1) Origin.[1]
(2) Women—through marriage.
(3) Taking up of a Government post.
(4) Voluntary acceptance (*Freiwillige Aufnahme*) into the *Heimatsverband.*

Furthermore, it is laid down in this Section that:

(1) The loss of nationality involves the loss of citizenship.

(2) A person losing nationality as a result of Peace Treaties and failing to acquire another nationality re-acquires the rights of citizenship which he possessed before losing his nationality.[2]

(3) Rights of citizenship in a commune cease through their acquisition in another. The renunciation of such rights is invalid as long as the renunciator has not acquired rights of citizenship elsewhere.

*Section III* relates to the treatment of *Heimatlose,* and *provisional* remedies are laid down for establishing rights of citizenship in cases where they are not normally acquired under the law until such time as they have been acquired. These provisional conditions include: the place in which military service was entered; the place in which the longest unbroken residence could be traced before the

[1] *Abstammung* (Waldert and Sollislau).

[2] Waldert. (This would seem to account for Article 77 of the St. Germain and Article 62, p. 2, of the Trianon Treaties.)

question arose; the place in which (where birth cannot be ascertained) a person is first found or where the orphanage entered exists.[1]

*Section IV* relates to poor relief (Arts. 22–31).

*Section V* relates to certificates of rights of citizenship, and lays down that such certificates constitute evidence of the possession of such rights; that they may not be refused to persons entitled to such rights; that they are invalid when the community learns that the bearer of such a certificate possesses rights of citizenship in another community.

The above summary of the law of 1863 is given in order that the range covered by the application of this principle in the execution of this law may be understood.

The two points most worthy of attention are the following:

(1) This law introduces the principle of *origin* in place of that of qualified domicile which had figured previously as a criterion for the acquisition of rights of citizenship.

(2) This law underlines and strengthens the *arbitrary* rights of the community as regards admission to its membership, as was never known in the older laws.

The above alterations made to the general system up to then followed as regards the acquisition of rights of citizenship led to a situation that soon became untenable. The criterion of origin in lieu of qualified residence proved, as time advanced and with the growing of the movement of the working population, to be more and more inapplicable. In the great cities and industrial

[1] The principle of Birth therefore is regarded only as a measure for acquiring *provisional Heimatsrecht*.

centres of Austria almost half the population came to be in fact strangers to the locality (*Ortsfremd*), i.e. *elsewhere Heimatberechtigt*.[1] Most of the working population had left their original communities at an earlier age and concentrated in the industrial areas; the time came when the question of their being entitled to poor relief was raised and on such occasions, with the result that all evidence of their original community membership had been lost. The rights of citizenship of hundreds of thousands thus came to be contested;[1] the cities and industrial centres not being obliged under the law to support the labourers with poor relief, and their original communities, after years of absence, clearly ill-inclined to shoulder the burden. This situation became in time so serious that it was considered necessary to modify certain provisions of this law, which modification was intended to follow more or less the lines of the English "Poor Law Reform" of 1834, according to which the principle of Origin made way for an extended form of the principle of Qualified Residence, namely, in the distribution of poor relief, the acquiring community (that clearly benefited from the labour locally furnished) would bear the responsibility and not the original community which the labourers may have left at an early age.

It was for these reasons and in order to alleviate an obviously unsatisfactory state of affairs that the *Heimatsgesetznovelle* of December 5, 1896, was finally introduced.

*Heimatsgesetznovelle of December 5, 1896.*—This law modified certain provisions of the law of 1863 and notably in the following manner: The acquiring community, or

[1] Sollislau.

rather *Aufenthaltgemeinde*, was forced to accept into its community all Austrian nationals who had resided of their own free will *uninterruptedly* for a period of ten years in that community without having become a burden to the poor relief resources (*Armenversorgung*) during that time. On acceptance into the community, rights of citizenship in the previous one were lost and the acquiring community was bound to inform that previous community of its acceptance. This modification, although at first sight seemingly an improvement, led nevertheless to a series of difficulties which continued henceforward, and are indeed still prevalent to-day, and for the following reasons: It should first of all be noted that such acceptance into the community did not occur *ipso facto* after ten years' residence, but only on *application*. Furthermore, this right of application did not only concern the individual applicant, but also his release from the community in which he had previously possessed rights of citizenship (*Entledigungs Anspruch*) (Discharge Application). The condition of unbroken residence for ten years gave rise to an apparently endless series of contests as regards rights of citizenship between the original and the acquiring communities. There is evidence that such contests were very general, and all that arose were determined by the Supreme Administrative Court of Justice at Vienna (*Obersteverwaltungsgerichtshof*).[1] These contests were often stretched over very long periods, during which time the individual concerned usually enjoyed no rights of citizenship, and should he have happened to enjoy such rights, they were only of a provisional nature. The number of

[1] Sollislau.

such cases were continually on the increase up to the conclusion of the Peace Treaties.[1]

But, apart from these cases, further difficulties often arose, and of a more far-reaching nature.

*Indeed, there were a considerable number of persons whose Austrian nationality was unquestioned, but who nevertheless possessed no rights of citizenship.*[2] Amongst these figured the gipsies.

But by far the greatest element falling within this category was composed of *retired officers' families, lawyers, and solicitors in private practice, intellectuals of every description, and persons in general who had no real reason to fear complete destitution or the necessity of poor relief*, and who therefore attached no importance whatever to the acquisition of rights of citizenship in any particular community. In fact, all persons who were in a fairly good financial position and had no reason to fear for the future fell within this category.

Furthermore, and of primary importance, there were the category of actual *Heimatlose*, persons who needed poor relief, but who could only be provisionally ascribed to a community. *That these were many in number is clearly proved by the fact alone that the law of* 1863 *specifically laid down conditions whereby a person placed in this position could acquire provisional relief*; in other words, the law itself provided for the treatment of a category of persons for whose situation no permanent solution might be found.[2]

[1] Sollislau, *Diese Fälle die sich natürlich ins Tausendfache verniehren liess*, p. 15.

[2] Sollislau.

(*b*) *Hungary.*

The Hungarian Law of 1886 regarding community membership (*Gemeindezugehörigkeit*), and which is still valid, drew its inspiration from the law of the North-German Bund regarding *Unterstützungwohnsitz* of June 6, 1870, which itself was largely based upon the English Poor Law of 1834. It is in consequence more modern in spirit than the old Austrian Laws regarding *Heimatsrecht.*

Community membership was acquired:

(1) Through origin.
(2) Through marriage—for women.
(3) Through automatic acquisition by time (*Stillschweigende Ersitzung*).

According to paragraph 10 of this law, it is laid down:

> That every Hungarian national leaving a community and settling in another, and having resided for a period of four years uninterruptedly in the new community, and having, moreover, subscribed to the expenses of that community during that period, without that community having reason to complain against his moral integrity, will be regarded as being a member of that community (*Gemeindeverband*), and as having lost the membership of his former *Heimatsverband*, even if he had not notified his intention to settle in the new community.

This paragraph has been interpreted by the Supreme Administrative Court of Hungary to mean that the follow-

ing conditions suffice for the acquisition of community membership:

> "(1) The subscription on one occasion during these four years towards the commune expenses.
>
> "(2) Through any kind of services rendered for the community needs and purposes.
>
> "(3) That through the fulfilment of these conditions such membership was *automatically* acquired without any further formality."

This interpretation came to be recognized by the Hungarian Administrative Authorities as decisive, and the article was applied in that sense.

If the Hungarian Law was in advance of the Austrian in this respect, i.e. that it provided for *automatic* acquisition of communal membership after a fixed period of unbroken residence—a condition unfortunately unknown to the Austrian Law—the Hungarian Law fell short of the Austrian in one, and in an important respect, namely, that it did not, and indeed does not, make provision for the acquisition of communal membership, and, consequently, of communal rights by the mere fact of appointment to a Government post.[1] *Hungarian officials did not necessarily acquire rights of citizenship in a commune in which they fulfilled their functions, whereas Austrian officials did.*

As regards the actual application of the law, there is evidence that the only importance attached in Hungary prior to the War to communal membership lay in the claim to poor relief that it gave to persons who found them-

[1] Sollislau, p. 18.

selves in a situation of complete destitution, and that apart from Budapest and other large cities, no lists were kept anywhere of the members of the communes.[1]

(*c*) *Croatia-Slovènia.*

The *Landesgesetz* of April 30, 1880, from which all the regulations in that territory for the acquisition of communal rights derive, could be said to have amalgamated the conditions of both Austrian and Hungarian Laws referred to, i.e. apart from the principles of Origin, Marriage for Women, and Voluntary Acceptance by the Community, the law also recognizes acquisition through appointment to an official post and automatic acquisition through time (*Stillschweigende Ersitzung*). In the case of the latter, the same conditions are laid down as in the Hungarian Law, namely, four years' unbroken residence and subscription to the communal expenses.

It should be noted here that the ex-Kingdom of Croatia-Slovenia formed an independent *Bundesstaat* within the ex-Austrio-Hungarian Empire, with its own laws and administration.

As regards the application of the law, the same difficulties arose as in the case of Austria and Hungary, namely, *that its importance was considered as limited to questions of poor relief.*

(*d*) *Bosnia-Herzegovina.*

It was not until 1909 that the annexation of Bosnia-Herzegovina by Austria-Hungary was agreed to by the

[1] Dr. Emil Vita, *Községinilletöség*, printed in Budapest in 1912.

Powers, including Turkey. Prior to that date, Austria-Hungary only exercised a mandate over the said ex-Turkish provinces by virtue of a Decision of the Berlin Congress of 1878.

In 1909 it became a *Reichsland* of both Austria and Hungary, with its own system of *Landesangehörigkeit.*

The conditions under which such *Landesangehörigkeit* was acquired were laid down first on February 17, 1910, in the *Landesstatute* for Bosnia and Herzegovina. *This Landesstatute made no reference either to the Austrian or the Croatian-Slovenian Heimatsrecht, nor to the Gemeindezugehörigkeit as known in Hungary. In fact, those principles have never been known in these provinces.*

According to the *Landesstatute* and to the *Zirkularerlass,* issued by the Ministry of the Interior of Austria-Hungary of August 19, 1912, both Austrian and Hungarian officials, functioning in Bosnia-Herzegovina, acquired Bosnian-Herzegovinan *Landesangehörigkeit* without losing Austrian or Hungarian rights of citizenship.

*Forms of Heimatlosigkeit on the eve of the Peace Treaties.*

Thus it will be seen that *Heimatlosigkeit* was of comparatively usual occurrence, and that in many instances, where the situation did not exist in its extreme form, such *Heimatsrecht* as was possessed was of a *provisional* nature only.

The problem might be said to have presented itself mainly in the following forms:

*Heimatlosigkeit* (Absence of Rights of Citizenship or of Communal Rights).

(1) Resulting in cases where no importance was

attached to its possession (*Heimatsrecht*) by persons with certain means, such as people drawing State pensions, business-men, solicitors, intellectuals, etc. (throughout the Old Empire).

(2) Of gipsies in general (throughout the Old Empire).

(3) Where no provision was made under law for the acquisition of *Heimatsrecht* by persons appointed to official posts, in the communes in which they served (Hungary only).

(4) Due to the absence of lists of communal membership. In such cases membership might in fact have been acquired, but in the absence of lists no proofs could be secured (Hungary).

(5) Where the principle was entirely unknown and *Heimatsrecht* consequently not possessed (Bosnia-Herzegovina).

(6) Where its possession was contested between two communes and its definite acquisition pending researches made by the Administrative Authorities or a Decision of the Supreme Court at Vienna (Austria).

(7) Where its possession was only *provisional* and promised to remain so (Austria).

From the above, the extent to which *Heimatlosigkeit* existed can be ascertained. Such was the situation on the eve of the Peace Treaties.

*Nationality; Heimatlose-staatlose.*—The point of supreme importance, however, that should at once be noted before proceeding further is that the *Austro-Hungarian nationality of such Heimatlose was not called into question.* Although *Heimatlose,* such persons were not necessarily *Staatlose.* The laws laid down that all nationals must be *Heimat-*

*berechtigte* (which injunction was not always taken very seriously); they did not lay down that only *Heimatberechtigte* enjoyed Austro-Hungarian nationality. In fact, as a criterion for the acquisition of nationality, this principle had long since ceased to be applied (that is, if it had ever been seriously applied), and its application had dwindled into little more than as a basis for the measures taken to combat destitution and vagabondage.[1]

An attempt to make nationality dependent upon the possession of such *Heimatsrecht* in the circumstances above described would amount to little more than an attempt to make nationality dependent upon the drawing of poor relief and safeguarding from vagabondage.

In theory, lists of communal membership were supposed to exist in every commune, and in theory everyone was supposed to be inscribed in such a list. In practice, little, if any, importance was attached to such inscription other than in the case of the completely destitute, which the commune had to support.

*Nevertheless, this was the principle finally chosen by those who drafted the Successor State Treaties, and it was on these theoretically sound but practically unreliable foundations that the decisive factor for the acquisition of nationality by fifty-two millions of people was based.*[2]

It is said that it was the original intention of the drafting Powers to insert into these Treaties the ordinary and much simpler principle of Habitual Residence applied under the Versailles Treaty, but that, on the instance of the Austrian and Czechoslovakian Peace Delegations, this intention was abandoned and the principle of *Heimatsrecht*

[1] Lucien Wolf, Soltau, and others. [2] Sollislau.

applied. Whatever may have been the cause, the fact nevertheless remains that what seemed reasonably possible and just in theory (with the exception of Bosnia-Herzegovina, which was a grave political oversight), proved to be extremely confusing when set into practice (as will be seen later), and responsible in the main for such cases of statelessness or of contested nationality as have since arisen.

*Situation of Heimatlose on the application of the principle of Heimatsrecht under the Treaties of St. Germain, Trianon, and the Minorities Treaties signed by the Successor States.*

Persons who had never attributed importance to the possession of such rights, and who, despite this, enjoyed the usual privileges of nationality, were suddenly placed in a position where everything depended upon their possession of such rights, namely, their nationality, their pension claims, their rights before the Law Courts, and indeed the meanest of those human privileges to which they were entitled.

Persons whose rights were being contested at the time between two communes, whose cases were being investigated by the Administrative Authorities, or whose cases were pending a decision of the Supreme Court at Vienna, had all possibility of a solution under the old order of things removed, where the communes in question happened to fall on two different sides of the new frontier lines.

Persons possessing provisional *Heimatsrecht* under the old laws found that their chances of acquiring such rights definitely were even further removed than before.

Ex-Hungarian Government officials posted in the terri-

tories of the Acquiring States found themselves solely dependent upon the good will of those States and with no legal protection.

Bosnian-Herzegovinians, who had never known the principle of *Heimatsrecht*, found themselves suddenly confronted with the prospect of wholesale statelessness.

Ex-Austro-Hungarian officials in the Bosnian-Herzegovinian Service discovered that they were, for the greater part, in possession of two nationalities.

Widows and orphans of pensioned officers and pensioned officers in general found themselves suddenly deprived of all sources of revenue.

*Position of the Communes.*—The communes became suddenly invested with what must have been a startling degree of importance. They held in their hands, as it were, the destinies of a large number of persons whom they had long lost sight of, or completely forgotten. It is perhaps natural, in these conditions that, for fear of being overflooded by persons in destitute circumstances, they should strive at all costs to refuse accepting responsibility for those who had long since left and settled elsewhere, or who had in their opinion settled long enough in another commune to make that commune responsible for their upkeep. In the absence of definite proofs, the communes were not likely to be over-generous.

*Categories of Heimatlose yet further increased under the Treaty provisions.*

If the conditions were difficult under the application of Article 70 of the St. Germain and Article 61 of the Trianon Treaties, they were rendered still more confused

under the application of Article 72 of the former Treaty regarding the Italian Tyrol and Articles 76 of St. Germain and 62 of the Trianon Treaties regarding Czechoslovakia and Jugoslavia. Where no specific time-limit, beyond the coming into force of the Peace Treaties, was set for Austria, Hungary, Poland, and Rumania, such *Heimatsrecht* as was possessed was only valid and nationality only *ipso facto* acquired thereby in Czechoslovakia and Jugoslavia, if possessed prior to January 1, 1910, and in the Italian Tyrol before May 24, 1915 (unless concurrent with birth).

In Czechoslovakia, in Jugoslavia, and in the Italian Tyrol, *Heimatsrecht* acquired after the above-mentioned dates was wholly useless to the possessor, and, apart from naturalization, the only course open to him for acquiring a nationality was through the re-acquisition of his previous *Heimatsrecht* (redintegration).[1] This occurred *ipso facto* under Article 74 of the St. Germain Treaty *re* the Italian Tyrol and Articles 77 and 62 of St. Germain and Trianon respectively, but, of course, *only if* such previous *Heimatsrecht* could be established.

Thus, as far as these three States are concerned, not only did statelessness confront all the categories of *Heimatlose* above mentioned, but yet a further category of *Heimatlose* was created by the Treaties, namely, of those persons who in fact possessed *Heimatsrecht* after January 1, 1910, and May 24, 1915, but could not prove its previous possession elsewhere.

The role played by the principle of *Heimatsrecht* or *Indigénat* in the Minorities Treaties signed by the Suc-

[1] For the principle of Redintegration, see Part I, Chapter IV.

cessor States is described in Chapter V, where the qualified birth and option clauses are also dealt with. The principle figures also in certain Interstate Conventions, as will be seen in Chapter VIII and in certain State Laws and Decrees, dealt with in Chapter IX.

It will be seen from the material contained in this chapter that, with the insertion of this principle in these Treaties, the menace of statelessness on a serious scale must have arisen *inevitably*.

## CHAPTER VIII

## INTERSTATE TREATIES AND CONVENTIONS

*The Peace Treaties between* POLAND, *Latvia, Estonia, and* SOVIET RUSSIA—*The Peace Treaty of* RIGA—*The abortive* BESSARABIAN *Treaty—The Austro-Czechoslovak Convention of Brunn—The Germano-Polish Convention of Vienna—The Polish-Czechoslovak Convention regarding Teschen, Spisz, and Orava—The Rome Convention of the Successor States of the Austro-Hungarian Empire—The Greco-Bulgarian Voluntary Exchange Convention—the Greco-Turkish Compulsory Exchange Convention*

WE have already dealt in Chapter IV with the Interstate Conventions and Agreements relating to areas to which the Minorities Treaties and Declarations do not apply.

Of the TREATIES, other than those already mentioned, that now concern us most, those signed between the European Successor States of the Russian Empire and SOVIET RUSSIA are the most important. The Treaties in question are Peace Treaties signed in turn by Latvia (August 11, 1920), Estonia (February 2, 1921), and Poland (March 18, 1921). These Treaties, where they relate to nationality, contain criteria for nationality acquisition which were known under the old Imperial Russian regime. An examination of the Russo-Polish Treaty of Riga will therefore suffice for the purposes of this book to establish the conditions under which Russian nationals acquired the nationality of the States in question.

The TREATY OF RIGA was ratified on April 30, 1921.[1] Its provisions refer to the Congress of Poland of 1815 and to the territories of the Russian Empire which formed part of Poland before the First Partition; and they are not applicable to the territory of Vilna occupied by General Zelegowski on October 9, 1920, and incorporated into the Polish State on April 6, 1922.[2] The nationality Article 6 reads as follows:—

(1) "All persons above the age of eighteen who at the date of the ratification of the present Treaty are within the territory of Poland, and on August 1, 1914, were nationals of the Russian Empire, and are, or have the right to be, included in the registers of the Russian Empire, and are, or have the right to be, included in the registers of the urban or rural commune, or of one of the class organizations in the territories of the former Russian Empire, which formed part of Poland, shall have the right of opting for Russian or Ukrainian nationality. A similar declaration by nationals of the former Russian Empire of all other categories who are within Polish territory at the date of the ratification of the present Treaty shall not be necessary.

(2) "Nationals of the former Russian Empire above the age of eighteen, who at the date of the ratification

[1] The frontier line laid down by the Treaty of Riga, whereby East Galicia, Volhynia, and part of the Ukraine fell to Poland, was adopted by the Conference of Ambassadors on March 15, 1923.

[2] Sir Walter Napier. Report to the Minorities Commission of the International Federation of League of Nations Societies (S.G. 1753, June 23, 1927).

of the present Treaty are within the territories of Russia and of the Ukraine, and are, or have the right to be, included in the registers of the permanent population of the ancient kingdom of Poland, or have been included in the registers of an urban or rural commune, or of one of the class organizations in the territories of the former Russian Empire, which formed part of Poland, shall be considered as Polish citizens, if they express such a desire in accordance with the system of opting laid down in this Article. Persons above the age of eighteen who are within the territory of Russia and of the Ukraine shall also be considered as Polish citizens if they express such a desire, in accordance with the system of opting laid down in this Article, and if they provide proofs that they are the descendants of those who took part in the Polish struggle for independence between 1830 and 1865, or that they are descendants of persons who have for at least three generations been continuously established in the territory of the ancient Polish Republic, or if they show that they have by their actions, by the habitual use of the Polish language, and by their method of educating their children, given effective proof of their attachment to Polish nationality."

The main point to be noted is that the above article does not provide for the *ipso facto* acquisition of Polish nationality by the categories of persons concerned. Such persons only acquire Polish nationality through option. It is true, however, that an inverse reading of paragraph 1 would lead one to conclude *prima facie* that the

persons in question who do not opt for Russian or Ukrainian nationality *retain* their Polish nationality.

At all events, seeing that the article does not refer to *ipso facto* acquisition of nationality, the stipulation contained in Article 3, paragraph 1, of the Polish Minorities Treaty, and whereby Russian nationals of Poland acquire Polish nationality, through habitual residence *ipso facto* and without the requirement of any formality, is in no way abrogated by this article of the Treaty of Riga.

Furthermore, as far as the League of Nations is concerned, the prevailing conditions for the acquisition of nationality by the Russian population in question are those contained in the Polish Minorities Treaty and in that Treaty only. It may here be pointed out "that no difficulty can arise from insisting on a strict adherence to the rules laid down by the Minorities Treaty, as Soviet Russia has, since the date of the Treaty of Riga, deprived such of her nationals as have not settled in Russia of their nationality."[1]

The above conclusions reached with regard to the Russians of Poland apply equally, in a general way, to the Russians of Latvia[2] and Estonia. The Declarations made by these two States before the Council of the League of Nations are equally binding in principle.

With respect to the Russian nationals of RUMANIA, no reference is made to these in the Rumanian Minorities

[1] Sir Walter Napier.

[2] The Latvian-Lithuanian Convention signed at Riga on May 14, 1921, does not expressly refer to the criteria in force under the old Russian Empire. "Nationality in each State shall be determined in accordance with the respective laws of each of these States" (Art. 1).

Treaty, and no Treaty similar to that of Riga has as yet been signed between Rumania and Soviet Russia. Recent efforts at negotiation between these two States have failed to secure any satisfactory results, and although Rumania continues to occupy Bessarabia, she does not hold that territory by virtue of any legally recognized Treaty (1933).

*The* BESSARABIAN TREATY, *signed at Paris on October 28, 1920, by the Principal Allied Powers and Rumania, has not come into force, its final ratification still requiring the adherence of Japan.* The following provisions of this Treaty are, however, of present interest:

> *Article 3.* "Rumania undertakes to observe the stipulations of the Treaty signed at Paris on December 9, 1919, by the Principal Allied and Associated Powers and Rumania, and to ensure their rigorous observance in the territory of Bessarabia as defined in Article 1, and particularly to assure to its inhabitants, without distinction of race, language, and religion, the same guarantee of liberty and justice as to the inhabitants of all other territories forming part of the Kingdom of Rumania."
>
> *Article 4.* "Rumanian nationality, to the exclusion of any other nationality, shall be accorded *ipso facto* to the nationals of the former Russian Empire settled in the territory of Bessarabia as defined in Article 1."
>
> *Article 6.* "Rumania recognizes as Rumanian nationals, *ipso facto* and without any formality, nationals of the former Russian Empire who were born in the territory of Bessarabia, as defined in

> Article 1, of parents domiciled there, although at the date of the coming into force of the present Treaty they may not themselves be domiciled there."

In the first place, the Rumanian Minorities Treaty was to be *rigorously* applied in Bessarabian territory; secondly, *ordinary* and not habitual residence suffices for *ipso facto* acquisition of Rumanian nationality by former Russian nationals; thirdly, Rumanian nationality is acquired by these persons *to the exclusion of any other nationality*; and fourthly, the qualified birth clause, common to all the Minorities Treaties, is applicable to this territory also. On the other hand, the option clause (Art. 5) differs from that contained in the other Treaties inasmuch as the optants have to make a declaration whereby they *renounce* Rumanian nationality and thus *cease* to be considered as Rumanian citizens.

Despite the fact that this Treaty has not yet been ratified owing to the absence of Japan's final signature, nationality laws have been promulgated by Rumania relating especially to Bessarabia (see Chapter IX). The extent to which the Rumanian Minorities Treaty can be considered as applicable, in the circumstances, to Bessarabia still requires to be determined.

Notable among the INTERSTATE CONVENTIONS relating to nationality, apart from those already dealt with, are the following:

(1) AUSTRO-CZECHOSLOVAKIAN CONVENTION OF BRUNN: signed on June 7, 1920, and ratified on March 10, 1921.

(2) GERMANO-POLISH CONVENTION OF VIENNA: signed on August 30, 1924.

(3) POLISH-CZECHOSLOVAKIAN CONVENTION regarding Teschen, Spisz, and Orava: signed on April 23, 1925, and in force as from April 29, 1926.

(4) ROME CONVENTION of April 6, 1922: signed by the Successor States of the Austro-Hungarian Empire and not yet ratified by all the signatories.

The BRUNN CONVENTION is of particular interest, seeing that it relates, amongst other things, to the possession of *indigénat* by public officials in Austria and Czechoslovakia, that it sets a definite interpretation to the ordinary birth clause (6) of the Minorities Treaties, and that it provides for the creation of a special Mixed Commission to deal with such nationality conflicts as may arise between the two States. By the expression "Treaty with Austria" in the text of the Convention is to be understood the Treaty of St. Germain, and by "Treaty with the Czecho-slovak Republic" is to be understood the Czecho-slovak Minorities Treaty.

Articles 3, 5, 16, and 30 of Part I (Citizenship) read as follows:

> *Article 3.* (1) "Both States mutually recognize the rights of citizenship (*indigénat*, *Heimatsrecht*) acquired in either State by public officials, in accordance with paragraph 10 of the Law of December 5, 1896 (*Reichs-Gesetzblatt*, No. 222), as a basis for the nationality of such persons."
>
> (2) "It is also mutually agreed that nationality may be acquired in either State by definite appointment

to a post in a State Institution or in some State undertaking. In the like manner public officials employed in the foreign service of either of the two States, whose official residences are outside the State by which they were appointed, shall be recognized as nationals of that State; the same rule shall apply—but without prejudice to the provisions of Section V of the Treaty with Austria—to persons who, on the tenth day after the signature of that Treaty, were doing duty in the forces of one of the two States as privates or non-commissioned officers."

(5) "Both Contracting Parties agree to regard the provisions of Article 65 of the Treaty with Austria and Article 6 of the Treaty with the Czechoslovak Republic as supplementary, that is to say: in cases where the other provisions relating to nationality do not suffice to establish the nationality of a national of the former Austrian State, these provisions shall constitute a *praesumptio juris sed non de jure* in favour of a nationality corresponding to the place of birth, which shall hold good in so far as no proof of nationality of another State by parentage is produced. The words at the end of the Article 65 'par sa naissance d'une autre nationalité,' and at the end of Article 6 'd'une autre nationalité de naissance' are therefore in practice to be interpreted not according to the place of birth, but according to parentage."

(16) "The two Contracting Parties mutually guarantee that they will not admit nationals of the other State to nationality in their State except where such admission is based upon the provisions of the aforesaid international Treaties, until the other State

has released the person to be thus admitted from its nationality."

(30) "Should one of the two Governments consider that a declaration of option in favour of nationality of the other State submitted by one of its nationals is clearly illegal, that is to say, that the conditions laid down in the Treaty with Austria, the Treaty with the Czechoslovak Republic, and the present Treaty are clearly not applicable in the case, such Government may, before submitting the case to the Mixed Commission (Art. 23), request the Diplomatic Representatives of the other State to declare, on the behalf of the State they represent, that the declaration of public opinion is null and void."

The curious and illuminating provisions above cited certainly contribute towards the relieving of nationality conflicts as between these two States. We have accepted in Chapter V the interpretation set by Article 5 of this Convention to the ordinary birth clause (6) of the Czechoslovak Minorities Treaty and of Article 65 of the Treaty of St. Germain, where these concern descent or parentage; and if we have reason to deplore the reference to the Austrian Law of December 5, 1896, for the reasons given in Chapter VII, it could not well be contended that the application of that Law would constitute an infraction of the relevant minorities articles of the two Treaties in question. But we cannot accept the *non de jure* character of the ordinary birth clauses referred to in this Convention; that these should constitute a *praesumptio juris sed non de jure* does not amount to an *interpretation*, but to

a *misinterpretation.* We will, however, return to this question later on, as also to the question as to when and on what date (i.e. *on and before* or *after* the coming into force of each Treaty) the provisions of Articles 6 and 65 become operative.

For the present it is sufficient to note that this Convention has not as yet secured the assent of the Council of the League of Nations.

The GERMANO-POLISH CONVENTION of Vienna (August 30, 1924) and the decisions of M. Kaeckenbeck of July 10, 1924, incorporated in the Convention, are of particular interest, especially as they relate to the interpretation of Articles 3 to 5 of the Polish Minorities Treaty. The Qualified Birth Article (4) of that Treaty had on September 15, 1923, been made the subject of an Advisory Opinion of the Permanent Court of Justice at The Hague (No. 7). Poland had contended "that it was a condition precedent that the parents should have been habitually resident in Poland, not only at the time of the birth of the claimant, but also at the date when the Minorities Treaty came into force,"[1] but the Polish contention was rejected by the Court.[2] The Vienna negotiations were undertaken in pursuance of a resolution passed by the League's Council on March 14, 1924, *and their results were approved by the Council on June 8, 1925.*[3]

[1] Sir Walter Napier, "Nationality in the Succession States of Austria-Hungary," read before the Grotius Society on January 21, 1932.

[2] Regarding the Advisory Opinion of the Hague Court, see Chapter IX.

[3] See Chapter X.

Article 4 of the Convention reads as follows:

"German nationals shall be considered as habitually resident within the meaning of paragraphs 1, 2, and 3 of Article 91 of the Treaty of Versailles and Article 3 of the Treaty of June 28, 1919 [Polish Minorities Treaty], in the territory defined in Article 3 of the present Convention, when, in conformity with the provisions hereinafter contained, they shall have established their habitual residence there and shall not have abandoned it."

"Paragraph 1. (1) Habitual residence shall have been established when a German national shall have settled in the aforementioned territory in order to carry on there the pursuit of his chosen objects in life, and shall be residing there habitually and regularly without any intention of leaving.

(2) Habitual and regular residence implies residence for a substantial part of the time.

"Paragraph 2. (1) Habitual residence shall be considered to be abandoned when the establishment has been brought to an end and the German national in question has left the above-mentioned territory without the intention of returning.

(2) The fact that the establishment has been brought to an end gives rise to a presumption of absence of the intention to return. On the other hand, an intention to return shall be presumed when the person concerned shall have re-established himself not later than January 10, 1920 [date of the coming into force of the Polish Minorities Treaty], in the centre where he shall have been living

before he gave up his establishment. A like presumption arises where the person concerned has re-established himself not later than January 10, 1920, in the territory surrendered by Germany, and where—

(*a*) During the period of establishment his parents, or, in case the marriage has been dissolved, one of his parents had been habitually resident in the said territory; or where

(*b*) Between his first settling in the said territory prior to January 1, 1908, and January 10, 1920, he had been established there for at least ten years after reaching his eighteenth year.

"Paragraph 3. (1) Residence of a temporary nature, or for the purposes of pleasure, such as country visiting, inspection of an undertaking, pursuit of game, shall not be regarded as constituting habitual residence within the meaning of the present Convention.

(2) The same applies to residence for secondary purposes; as such will be considered in particular, attendance at schools of all kinds, professional training or preparation, probation as 'assistant' or 'candidate,' compulsory military service, or participation in the War.

(3) Where the establishment shall have been given up in the pursuit of secondary objects, such as those referred to under (2) of the present paragraph, maintenance of habitual residence shall be presumed if the person concerned shall have re-established himself in the territory defined in Article 3 of the present Convention not later than January 10, 1920."

The above article is given *in extenso*, as it constitutes

the first and only attempt made officially up to now to set an acceptable interpretation to the term "habitual residence." As this principle figures *in all the Minorities Treaties* and in most of the Declarations, and as the *interpretations* set to it have hereby received the approval of the Council of the League of Nations, the importance of the Convention cannot be overestimated. We will return to these interpretations as also to the general interpretations set by M. Kaeckenbeck to Articles 3 to 5 of the Minorities Treaties later on.

The POLISH-CZECHOSLOVAK CONVENTION of April 29, 1926, regarding the Silesian territories of Teschen, Spisz, and Orava. The dispute that arose between these two States over these territories was made the subject of a Decision of the Conference of Ambassadors on July 28, 1920. The nationality articles, agreed upon as early as June 16, 1922, by the delegations of the two States, can be summarized as follows:

Either Polish or Czechoslovak nationality is acquired *ipso facto* by persons possessing *indigénat* at least before January 1, 1914, or through habitual residence at least before January 1, 1908,[1] in the plebiscite area in question. These persons acquire the nationality of the State in which their commune falls or in which they are habitually resident. Persons possessing the *indigénat* of a commune divided by the frontier line acquire the nationality of that State to which that part of the territory of the commune belonged in which they were habitually resident on July 28, 1920. Persons who were not thus habitually

[1] Here the French text *au moins depuis* is clearly misleading.

resident on that date acquire the nationality of the State to which that part of the commune belongs in which they were *last* habitually resident before leaving the commune. The establishing of such habitual residence or *indigénat* possession *is not made dependent upon registers of domicile or communal registers alone*, but may also be based upon other evidence such as that supplied by witnesses. In cases of dispute regarding *indigénat* possession or habitual residence as criteria for the *ipso facto* acquisition of nationality, *indigénat will have precedence over habitual residence.* There follow clauses whereby persons failing to meet the above prescriptions may ask to become Polish or Czechoslovak nationals, if possessing *indigénat* or if habitually resident prior to October 28, 1918. Exceptions are made in these cases, where acceptance into citizenship would involve direct financial charges on the State or on public funds, where habitual residence has not been uninterrupted between October 28, 1918, and July 28, 1920, where such acceptance into citizenship would be impossible for other important reasons of State.

*Where cases of nationality are not settled, the nationality of such persons will be determined in accordance with the provisions of the Treaties of Peace* (Art. 2 *d*).

Finally, the nationality provisions of these Articles have been incorporated in the Czechoslovak Decree, No. 83461, of November 8, 1922, and in the Polish Decree, No. 58, of December 12, 1922.

From the text of this Convention it is clear that the authorities in both States experienced considerable difficulties in applying the principle of *indigénat*, and

that different kinds of measures had to be taken to establish claims to nationality in the absence of inscription in communal registers. The Convention is of importance inasmuch as it definitely recognizes habitual residence as an alternative criterion to that of *indigénat*, the latter only having precedence over the former in cases of dispute. It cannot be said, however, that the Convention respects either the Polish or the Czechoslovak Minorities Treaties; in fact it ignores these two Treaties altogether (they are not Peace Treaties), and contains conditions (financial burdens, etc.) contrary to the spirit in which the two Treaties were drafted and to the purpose which they were intended to fulfil.

The ROME CONVENTION of April 6, 1922, signed by the Successor States of the Austro-Hungarian Empire (Austria, Czechoslovakia, Hungary, Italy, Poland, Rumania, and Jugoslavia), is the only multipartite nationality Convention of its kind on record in Europe. All these States, with only Italy excepted, have signed minorities provisions placed under international guarantee. The articles of the Convention read as follows:

*Article 1.* "The ways of acquiring or losing nationality are regulated by the Law of each State."

*Article 2.* "In intercourse among the High Contracting Parties nationality shall be proved by a certificate issued by the competent authority according to the Law of each State and visaed by the Authority to which the above-mentioned authority is subject.

The certificate shall show the legal basis of the nationality which it attests. Each of the High Contracting Parties may, however, whenever it considers it necessary, require that the contents of the certificate be certified by the central authority of the State."

*Article 3.* "The High Contracting Parties bind themselves reciprocally to notify one another of the list of authorities competent to issue and visa the certificate mentioned in the foregoing article."

*Article 4.* "In case of dispute among the High Contracting Parties as to the nationality to be attributed, according to the Treaties of St. Germain and of Trianon, to a national of the former Austrian Empire or to a national of the former kingdom of Hungary, a Commission composed of one delegate from each of the High Contracting Parties interested, and of a chairman elected by common consent by the said parties, and, in case of disagreement, by the President of the Swiss Confederation from among the nationals of a State other than the Contracting Parties—the periods determined for the exercise of the right of election or option having expired—shall decide the controversy. In case of disagreement among the delegates, the chairman shall make the decision.

"The decision shall in every case be final.

"The above provisions do not in any way modify the provisions and regulations of the Treaties of St. Germain and Trianon, and, particularly, the provisions of Articles 81 and 230 of the Treaty of St. Germain and of Articles 65 and 213 of the Treaty of

Trianon,[1] nor the provisions of special conventions concluded or to be concluded among the States interested, especially those of the Convention between Austria and Czechoslovakia, signed at Brunn, June 7, 1920."

It is certain that the negotiations at Rome were inspired by a general desire felt by the Successor States to give effect as soon as possible to the nationality provisions of the St. Germain and Trianon Treaties and to find adequate means for remedying situations which would otherwise lead to disputes and to misunderstanding, especially where the said Treaties contained provisions for the conclusion of Minorities Treaties between the Powers and Czechoslovakia (St. Germain, Art. 57), Jugoslavia (St. Germain, Art. 51; Trianon, Art. 44), and Rumania (St. Germain, Art. 60; Trianon, Art. 47), which in their turn contained further nationality articles. The Commission proposed by the Convention for the settlement of controversies arising between any of the States concerned and the neutral character, where necessary, of its chairmanship would certainly supply machinery that could only be considered as desirable. That the decisions made by the Commission should "in every case be final" is, however, another matter altogether. The Convention would seem here to ignore not only the existence of the Minorities Treaties, but also the international character of those articles of the Minorities

[1] These articles refer (*a*) to the guarantees given by the High Contracting Parties to set no obstacles in the way of the operation of the option clauses of these Treaties, and (*b*) to the recognition by Austria and Hungary of the new frontier lines.

Treaties whereby the States concerned are under an immediate obligation to the Council of the League of Nations as regards the proper application of those Treaties. It is not even clear from the study of its text that the Convention purposes to refer at all to the nationality situation of persons who, if acquiring a new nationality, would be minorities by race or language, and it might be held that it applies in a general way only to persons whose interests each corresponding State by race or language would be anxious to safeguard. At all events, the Convention refers only in a very indirect way to the Minorities Treaties, and certainly does not take cognizance of the League Council's competence. Furthermore, although the Convention was signed eleven years ago, most of the ratifications are still missing, only Italy and Austria having ratified it (March 2, 1924), and we believe Czechoslovakia.[1]

Of the EXCHANGE OF POPULATIONS CONVENTIONS, one is *voluntary* and the other *compulsory*.

The Greco-Bulgarian Voluntary Exchange Convention of November 27, 1919, was concluded in fulfilment of Article 56 of the Neuilly Peace Treaty. The Convention provided for a Mixed Commission composed of four members, two of which were appointed by the Council of the League of Nations. The duties of this Commission were to supervise the voluntary emigration. The Convention contains the following nationality article:

[1] The Rome Convention has been made the subject of several resolutions passed by International Societies. (See Chapter XII.)

*Article 5.* "Emigrants shall lose the nationality of the country which they abandon from the time when they shall have left it, and they shall acquire that of the country of destination upon their arrival on the territory of that country."

The GRECO-TURKISH COMPULSORY EXCHANGE CONVENTION was signed at Lausanne on January 30, 1923. It concerned the compulsory exchange of Turkish nationals of Greek Orthodox religion in Turkish territory and of Greek nationals of Greek territory, Moslems by religion—with the exception of the Greek inhabitants of Constantinople and the Moslem inhabitants of Western Thrace. The Convention provided for a Mixed Commission composed of eleven members, three of which were chosen by the Council of the League of Nations from among nationals of States that were neutral between 1914 and 1918. The functions of this Commission were similar to those of the Commission appointed under the Greeko-Bulgarian Exchange Convention.

The Convention contains the following nationality provisions:

*Article 7.* "The emigrants will lose the nationality of the country which they are leaving, and will acquire the nationality of the country of their destination upon their arrival in the territory of the latter country.

"Such emigrants as have already left one or other of the two countries and have not yet acquired their new nationality shall acquire that nationality on the date of the signature of the present Convention."

These two Exchange Conventions have already been

referred to in Chapter IV of this book. It is sufficient to note for the present that whilst involving rigid measures and leading—especially in the case of compulsory exchange—to anything but desirable situations, they do in fact tend to remedy certain nationality problems, if indeed nationality acquisition *en masse* may be regarded as a remedy under the Law of Nations.

Where the Conventions confine themselves to interpreting or defining the nationality provisions of the Minorities Treaties in strict conformity with the principles underlying them, the situation certainly becomes clearer and the application of those Treaties greatly facilitated, as in the case of the Vienna Convention of August 30, 1924. On the other hand, where these Conventions introduce new provisions in which the original principles laid down are appreciably altered, the application of the minorities articles certainly becomes more difficult. In such cases the view that we would take would be that the minorities articles still hold good, and have precedence over any Convention provisions should these differ from them essentially. This view coincides with the provision contained in each Minorities Treaty stipulating that no changes may be effected in the articles in as far as they concern minorities without the approval of the majority of the Council of the League of Nations.

We have not found, however, any provisions in the Conventions hitherto concluded that deviate sufficiently from the Minorities Treaties provisions as to render *state-*

*lessness*, for example, more general among minority populations or to render acquisition of one or another nationality more difficult. The introduction of the principle of *indigénat* into the Polish-Czechoslovak Convention regarding Teschen, etc., and the application of the specified date of January 1, 1908, for habitual residence to other than German nationals *constitute an actual infraction of Article 3 of the Polish Minorities Treaty*. These insertions correspond, however, to the provisions of the Polish Law of January 20, 1920 (see Chapter IX), which applies the principle of *Indigénat* and not of Habitual Residence to the territories of Poland which originally formed part of the Austro-Hungarian Empire. This Convention thus improves upon the Polish Law, whereas it derogates from Article 3 of the Polish Treaty. On the other hand, where the Conventions provide for Mixed Commissions or Courts of Arbitration (Rome and Brunn), they contribute usefully towards a solution by the mere fact that they supply a local machinery which can but be of assistance to the Council of the League of Nations, should that body be called upon to take a decision. The Council must, of course, remain in all cases the body of the highest instance; on this understanding the conclusion of such Interstate Conventions should only be encouraged. Thus the Turco-Bulgarian Convention regarding Thrace of October 18, 1925 (see Chapter IV) can only be welcomed, seeing that special reference is made in it to the unaltered competence of the League's Council in minorities matters. Similarly, those Conventions between Greece and Bulgaria, Greece and Turkey, Greece and Albania, and

between the Baltic States and Soviet Russia, that tend to determine with more precision than do the minorities articles the conditions of acquisition and loss of nationality, can only prove of assistance on the understanding always that the League Council's supreme authority continues to remain intact.

## CHAPTER IX

## STATE LAWS AND DECREES

THE State Laws and Decrees regarding nationality in the areas covered by the international guarantees already described are, of course, many in number, and it would be impossible to deal with each of them in detail. For the purposes of this work it will be sufficient to examine those which we have good reason to believe contain provisions that are not only contrary to the Treaty stipulations relative to these areas, but which tend to complicate yet further the nationality issues arising out of these Treaties by adding to the number of cases of *statelessness* or of double nationality. We have already dealt with the laws in force in such areas as those of Schleswig, Eupen-Malmédy, Alsace-Lorraine, the Italian Tyrol, Fiume territory, Dodecanese Islands, Cyprus, and Turkey, etc., and have ascertained the Peace Treaty defects and the defective Conventions and State Laws or Decrees where these exist (Chapter IV).

If it can be said that the Conventions referred to in the preceding chapter have not notably contributed towards *statelessness*, but have rather rendered its presence somewhat more rare, the same cannot be said in all cases with respect to the national Laws and Decrees promulgated in the areas covered by the Minorities Treaties and Declarations. Such Laws and Decrees were obviously necessary, for it would be incorrect to consider the so-called minorities articles (applicable to

majorities also) as complete in themselves. Furthermore, all Treaty provisions are open to a certain degree of interpretation, and indeed require it in order to become effective. These articles seriously require such light as was thrown upon them by the *Vienna Convention of August 30, 1924.* At the same time, the Minorities Treaties lay down that amongst others their nationality articles must be recognized as *fundamental laws.* If not complete, the principles underlying these articles are nevertheless conspicuous; any tampering with or alteration of these principles cannot but fail to constitute an infraction of the Treaty articles where these concern minorities.

Conspicuous amongst Laws and Decrees of the above nature are the *Polish Law of January 20, 1920, the Rumanian Law of February 23, 1924, and the Decree of April 15, 1924, and the Czechoslovak Law of July 1, 1926.* All three Laws have been brought to the notice either of the League of Nations or of the Permanent Court of Justice at the Hague, but the form in which they were presented either called for no intervention or else for local intervention only as regards the particular minority population. We have examined all the Nationality Laws of the States signatories of the Minorities Treaties and Declarations, and although we are not quite satisfied that certain provisions of these are in harmony with the obligations undertaken by the States concerned,[1] we

[1] E.g., (*a*) the Latvian Laws of August 23, 1919, October 7, 1921, and of June 2, 1927; (*b*) the Jugoslav Nationality Law of September 21, 1928 (Article 52, etc.).

have felt that their shortcomings are almost inconspicuous in comparison to the provisions of the Polish, Rumanian, and Czechoslovak Nationality Laws and Decrees above mentioned.

*These Laws and Decrees constitute in our opinion the main causes of statelessness derived from State legislation that confront us today, at all events in the territories of the Successor States of the Austro-Hungarian Empire.* Moreover, they have been promulgated in three States that are signatories of Minorities Treaties and in which the nationality problems threatened to be more than ordinarily complicated. Poland and Rumania bordering upon Soviet Russia and Czechoslovakia partly lying between them form a geographical group in which the permanent settlement of frontiers and of frontier populations has necessarily required a certain amount of time. Nevertheless, the populations most affected by these Laws (in theory this should not be the case, as the Laws are applicable to majorities and minorities alike, but it would seem to be so in fact) are minorities, and the Minorities Treaties are in force in all three territories. The question naturally arises as to why the problem should be particularly acute in these areas and amongst populations over which international protection can be exercised and where the necessary international machinery exists to combat statelessness. In this respect we have reached the conclusion *that such cases of statelessness as arise here could be in many instances remedied by the strict application of the Minorities Treaties, whereas in other cases no remedy can be found through their application alone; and to these should be added the cases*

*in which the effective results of such application would be doubtful.*

We have in this connexion studied in particular the nationality situation in Poland, Rumania, and Czechoslovakia. In order to determine to what extent the above Laws deviate from the principles underlined in the Minorities Treaties, it is necessary first of all to examine the articles of these Treaties as they apply to the States in question.

*The Polish Nationality Law of January 20, 1920.*

Article 3, paragraph 1, of the Polish Minorities Treaty recognizes only the principle of habitual residence; the reference to the Treaty concluded with Austria has no *direct* bearing upon Article 70 or upon any other article of the Treaty of St. Germain in question, as these do not anywhere refer to persons who "became resident" in Polish territory "after a specified date." *Indigénat*, requiring residence among other conditions, might be held to be indirectly applied, but the criterion of habitual residence, as explained in Chapters V and VI, is alone applicable as far as Article 3 (paragraph 1) of the Polish Minorities Treaty is concerned. This article being made subject to Article 91 of the Versailles Treaty, the date from which such habitual residence commences is January 1, 1908, for the *German* nationals of Poland. For Austrian, Hungarian, and Russian nationals the date fixed for habitual residence is *January 10, 1920*, i.e. the date of the ratification of the Versailles Treaty. The provisions of the Polish Minorities Treaty were

placed under the guarantee of the League of Nations on *February 13, 1920.*

The Polish Nationality Law, where it affected *German* nationals, necessarily underwent modifications as a result of the Hague Court's Opinion of September 15, 1923, and the Vienna Germano-Polish Convention of August 30, 1924 (see Chapter VIII). As regards *Austrian, Hungarian,* and *Russian* nationals of Poland, however, the Law (Art. 2) supplants the principle of Habitual Residence in the case of *Austrians* and *Hungarians* with that of *indigénat,* habitual residence being completely *outruled.*

The relevant clauses of Article 2 read as follows:

> *Article 2.* "As soon as this Law is published, persons without distinction as to sex, age, religion, or race in the following categories shall have the right to Polish citizenship:
>
> "(1) Those domiciled within the boundaries of the Polish State, provided they are not citizens of another State. The following shall be regarded as domiciled in the Polish State in the meaning of this Law:
>
> (*b*) Those who have the right of permanent abode in one of the communities [*indigénat*] within the boundaries of the Polish State formerly forming part of the Austrian and Hungarian States."

As for Russians referred to in the Polish Treaty, the Law provides that the necessary domicile required for acquiring Polish nationality is regarded as possessed by (*d*) "Those who were registered in a town or village community or caste or class organization in the terri-

tories of the former Russian Empire which now form part of the Polish State."

It is true that Article 2 (3) confers Polish nationality upon persons "who are entitled to Polish citizenship by virtue of international treaties," but this provision would appear to refer only to cases where Polish nationality is acquired through *option* under the Treaties of Versailles, St. Germain, Trianon, and Riga (see Chapters V and VIII). There can be no doubt whatever as to the fact that the Law has indeed supplanted the criterion of habitual residence contained in Articles 3 and 4[1] of the Polish Treaty by those of *indigénat* for Austrians and Hungarians and community registration for Russians in what has become permanent Polish territory. This fact can scarcely be regarded as a mere interpretation of Articles 3 and 4 of the Polish Minorities Treaty. To cite the words of the Hague Court in its opinion of September 15, 1923, re the Polish interpretation of Article 4 of the Minorities Treaty: "*Imposer à l'acquisition de la nationalité polonaise une condition supplémentaire qui n'est pas écrite dans le traité du 28 juin, 1919, ce ne serait plus interpréter ce traité, ce serait le refaire.*"[2]

Lord Finlay remarked: "The objection raised that persons fulfilling the conditions of Article 4 are only candidates for Polish nationality, and do not become Polish nationals until they have been recognized as such

[1] Article 4, the qualified birth clause refers to the habitual residence of parents alone.

[2] "To impose an additional condition for the acquisition of Polish nationality, a condition not provided for in the Treaty of June 28, 1919, would be equivalent not to interpreting the Treaty, but to reconstructing it."

by the Polish Government, does not bear examination. By the express terms of Article 4 they are *ipso facto* Polish nationals. If Polish Law requires registration or any other formality for the effective exercise of their rights as Polish citizens, the Polish Government is bound to provide for this; and most certainly the Polish Government could not set up any wrongful refusal of theirs as justifying their contention that these persons are not Polish citizens."[1]

These findings of the Court as regards Article 4 of the Polish Minorities Treaty *vis-à-vis* the Polish Law apply equally to Article 3.

Thus where Polish nationality should be acquired "*ipso facto* and without the requirement of any formality" through habitual residence alone by the Austrians, Hungarians, and Russians of Poland, under the Law it is only conferred upon these populations after the fulfilment of a series of formalities for which the Treaty makes no provision.

Whatever may be the Polish arguments advanced (see the reply of Simon Rundstein to de Lapradelle's criticism of the Polish Law in his opinion given to the "Comité des Délégations Juives" on April 21, 1924), the terms of Articles 3 and 4 are sufficiently clear, and any reconstruction of their provisions would amount to an infraction of the Treaty clauses placed under international guarantee.

The effect of this Law, apart from constituting an infraction of the Polish Minorities Treaty, *is certainly*

[1] See Sir Walter Napier's Memorandum on Statelessness. International Federation of League of Nations Societies, 1926.

*conducive to statelessness*, although it may avoid double nationality where the conflicting principles of Habitual Residence and *Indigénat* might operate, as for example between Czechoslovakia and Poland outside the districts of Teschen, Orava, and Spisz (Chapter VIII). The difficulty of establishing *indigénat* in the territories of the ex-Austro-Hungarian Empire has been already explained at some length in Chapter VII. And in the territory of East Galicia, the scene of many of the most sanguinary battles of the World War and of the Ukrainian War that followed, the necessary evidence of *indigénat* possession must have been particularly difficult, if not impossible, to secure. It is true that the Ordinary Birth Clause (Article 6 of the Polish Minorities Treaty; Article 2 (2) of the Polish Nationality Law) continues to be effective, but it is applicable only where the absence of nationality is *established* and not where nationality is *contested*, which is usually the case. It would be easy, for example, to contest the Polish nationality of Austrians and Hungarians in Poland in the absence of *indigénat*, and other interested States, such as Rumania, might well refuse to grant nationality on the basis of the Ordinary Birth Clause as long as the *non-possession* of such *indigénat* in East Galicia or elsewhere was not definitely determined.[1] *Furthermore, the contention that the principle of Indigénat is not considered as a sufficient or satisfactory measure for establishing nationality as between Poland and Czechoslovakia or Rumania, etc., is justified and proved to be correct by the provisions of the Czechoslovak-*

[1] Such nationality "cross-word puzzles" are dealt with in Chapter X.

*Polish Convention of April 29, 1926 (i.e. six years after the promulgation of the Polish Law) regarding Teschen, Orava, and Spisz, which expressly provides for the application of the principle of Habitual Residence also.* (See Chapter VIII.)

In our opinion, Article 2 of the Polish Law of January 20, 1920, no matter how favourably its provisions may be construed, constitutes an infraction of Article 3 of the Polish Minorities Treaty, and has sensibly contributed to the number of stateless persons in Poland.

*The Rumanian Nationality Law of February 23, 1924,* (its Article 67 modified by the Law of May 29, 1928).

Article 3 (paragraph 1) of the Rumanian Minorities Treaty textually provides only for the principle of Habitual Residence. Seeing, however, that its stipulations are made subject to the "special" provisions (French text, *sous réserve des traités* only, supported by the Italian text; see Chapter V) of the St. Germain and Trianon Peace Treaties, the provisions of Article 70 of the former and Article 61 of the latter therefore also form part of Article 3. Thus the principle of *Indigénat* becomes applicable side by side with that of Habitual Residence. We have concluded in Chapter V that Article 3 refers only to Austrians and Hungarians (and perhaps to stateless persons) in Rumania; that habitual residence anywhere in the kingdom on or before September 4, 1920,[1] sufficed for the *ipso facto* acquisition of Rumanian nationality; and that Austrian and Hungarian nationals

[1] Date upon which Rumania ratified her Minorities Treaty.

of Rumania, *not* habitually resident in Rumania, acquired Rumanian nationality *ipso facto* and to the exclusion of Austrian or Hungarian nationality, if possessing *indigénat* in Rumania. We have also explained in Chapter VII that *indigénat* was rarely possessed in the territories under the former Hungarian Administration, and that communal lists existed only in theory.

The Article of the Rumanian Law that concerns us is the following:

*Title IV. Final and Transitory Dispositions. Article 56.*

"The following classes of inhabitants are and remain Rumanian citizens if, until the date of the promulgation of the present Law, they have not opted for another nationality:

"(1) All inhabitants of Bukovina, Transylvania, the Banat, Crisana, Satmar, and Maramures who had a legal residence on December 1, 1918 (November 18th, Gregorian Calendar).

"(2) Inhabitants who on March 27/April 9, 1918, were legal residents of Bessarabia in accordance with the Laws in force in that province.

"(3) Inhabitants of the Old Kingdom who were admitted to Rumanian citizenship under the provisions of the Law Decrees ratified by Article 133 of the Constitution.

"(4) Inhabitants of the districts of Caliacra and Durostor, whose Rumanian naturalization has been definitely recognized by the decisions of the Commissions mentioned in Article 6 of the Law of April 1, 1914, and in Article 10 and subsequent

Articles of the Law of July 26, 1921, for the organization of New Dobrudja.

"(5) Persons originating from Bukovina, Transylvania, the Banat, Crisana, Satmar, and Maramures, who were residing in the Old Kingdom at the time of the union and who had a legal residence in one of the communes of the aforesaid territories.

"(6) Persons who on the date of the union, although not domiciled in one of the communes of Bukovina, Bessarabia, Transylvania, the Banat, Crisana, Satmar, and Maramures, were nevertheless born in one of those communes of parents domiciled therein.

"(7) Individuals of Rumanian extraction, natives of territories of the former Russian Empire and of territories attributed to the Serb-Croat-Slovene State,[1] to Czechoslovakia, Poland, Italy, Austria, and Hungary, who opted for Rumanian nationality before the local authorities of these States or before any Rumanian authorities.

"(8) Inhabitants of the communes who, at the establishment or rectification of the frontiers, pass from the sovereignty of another State to the sovereignty of the Rumanian State, provided they fulfil the requirements for classes of inhabitants listed under Numbers (1) and (2) above."

In the first place it would seem clear that the above Article, its clause (7) excepted, *refers only to persons who are not Rumanians by extraction, i.e. to minorities by race.*

[1] Jugoslavia. The present name of the Kingdom was officially adopted in 1929.

of the Rumanian Treaty refers not only to territory transferred to Rumania by the Treaties of Peace with Austria and Hungary, but also to territory subsequently transferred; paragraph 6 (Art. 56) observes this territorial stipulation by including Bessarabia in the territories mentioned, but the Law in this paragraph makes *a surprising departure* from the stringent principle of *indigénat* by recognizing that of simple *domicile*, thus setting a very different construction to Article 4 of the Rumanian Treaty than to Article 3 which it should normally follow.

The points that concern us most, however, are the supplanting in the Law of the date September 4, 1920, by that of December 1, 1918, and the principle of Habitual Residence in the Minorities Treaty by that of *indigénat* in the Law.

We have evidence to conclude that these departures from the provisions of the Rumanian Minorities Treaty are not due to any misunderstanding open to remedy, but that they are *intentional*. The Rumanian Government has indeed on more occasion than one contended that the *Peace Treaty* provisions, i.e. Articles 70 and 61 of the St. Germain and Trianon Treaties respectively, are the *only* provisions applicable. For the reasons explained in the Preface to this book, we cannot here reveal the arguments raised by the Rumanian Government with regard to petitions dealt with by Committees of the Council of the League of Nations. Sir Walter Napier has, however, made a thoroughly impartial study of the Rumanian Law in relation to the nationality provisions of the Rumanian Minorities Treaty, and we feel

that we could not do better than cite the following extract from his report on the subject:[1]

"The omission to recognize the nationality clauses of the Minorities Treaties would appear to be, as I have already pointed out, a matter of policy. The grounds by which this policy is sought to be justified are set out in a reasoned memorandum addressed by the Rumanian Government to the Joint Foreign Committee on May 25, 1925 (printed *in extenso* in the Report of the Joint Foreign Committee to the Sixth Assembly, pp. 23 et seq.). After stating certain reasons with which I shall deal shortly, the Rumanian Memorandum continues: 'For these reasons, Article 3 of the Minorities Treaty cannot by applied as it stands, and Article 70 of the Treaty of St. Germain and Article 61 of the Treaty of Trianon must be applied wherever it is necessary to determine the conditions in which the change of nationality of the inhabitants of the regained territories has to be made.' Of the reasons for a conclusion which undermines the basis of the Minorities Treaties, I select one. It is stated thus: 'It is certain that a special Treaty,' by which is meant the Minorities Treaty, 'agreed to only by some of the signatories of a general Treaty,' a Peace Treaty, 'can only modify the provisions of the general Treaty with the consent of all the signatories of that Treaty. For the States which have not consented to the modification, it remains *res inter alios acta*. This being the case, it cannot be admitted that the Minorities Treaty, signed

[1] International Federation of League of Nations Societies, Minorities Commission, Staatenlosigkeit. Report presented by Sir Walter Napier, S.G. 1755, June 23, 1927.

by only six States, can modify the principles and language of the Treaties of St. Germain and Trianon without the consent of the other thirteen States which signed the general Treaties.' Unfortunately for the argument thus presented, the thirteen States referred to had previously consented to the making of the Minorities Treaty and subsequently ratified it. The following quotations make this abundantly clear. By Article 60 of the Austrian Treaty, dated September 10, 1919, 'Rumania accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by these Powers to protect the interests of the inhabitants of that State who differ from the majority of the population in race, language, or religion.' In pursuance of this article, the Rumanian Minorities Treaty was on December 9, 1919, signed by Rumania. This Treaty contains a recital that 'Rumania desires of her own free will to give full guarantees of liberty and justice to all inhabitants both of the Old Kingdom of Rumania and of the territory added thereto, to whatever race, language, or religion they may belong.' The Hungarian Treaty was signed by the Powers, including the thirteen, on June 4, 1920, and by that Treaty 'Rumania recognizes and confirms in relation to Hungary her obligation to accept the embodiment in a Treaty with the Principal Allied and Associated Powers such provisions, etc.' I do not propose to pursue this subject further. I feel little doubt that if the reasons put forward by the Rumanian Memorandum were considered by the Permanent Court they would be rejected, as were the Polish objections in the case to which I have drawn attention."

The conclusions reached by Sir Walter Napier are cited because we have good reason to believe that they represent a just and effective criticism of the arguments raised by the Rumanian Government in support of the Law of February 23, 1924. From an official point of view, it would be sufficient to refer here to the observations submitted by the Rumanian Government in accordance with the League Council's procedure,[1] on the substance contained in an individual petition sent to the League of Nations in 1924 (C. 763, 1924, I.; C. 73, 1925, I). As far as the Secretariat of the League of Nations is concerned, this Law has naturally been studied very thoroughly by both the legal and minorities sections. It might perhaps be said even that if certain petitions had been drafted in more reasonable terms or had emanated from more reliable sources, the question would have figured by now on the agenda of the Council of the League, and would in all probability have been made the subject of an Advisory Opinion of the Hague Court—the Advisory Opinion, which, as Sir Walter Napier explains, would quite possibly have rejected the arguments put forward by the Rumanian Government.

As regards the question of the alteration of dates from September 1920 to December 1918—a measure quite incompatible with the stipulation contained in Article 3 of the Rumanian Minorities Treaty—the Rumanian Government have clearly shown their intention to

[1] The procedure regarding the receivability of minorities petitions laid down by the Council is dealt with in Chapter XI.

*ignore* the nationality provisions of the Minorities Treaty by arguing that in view of the fact that neither Article 70, St. Germain, nor Article 61, Trianon, fixed a special date upon which people would be entitled to nationality *ipso facto*, the setting of that date under Article 56 (paragraph 1) at the time of the military occupation of the territories in question was perfectly justified.

What with the unhappy provisions of this Nationality Law, *which does not even provide for the operation of the Ordinary Birth Clause (Art. 6) of the Minorities Treaty*,[1] which constitutes an infraction of Article 3 of the Minorities Treaty, and which in fact ignores the existence of the Treaty—all this, taken together with an unratified Treaty for Bessarabia and Nationality Laws for Dobrudja which lie outside the scope of international guarantees—constitutes a nationality situation which is scarcely enviable, and which, through giving rise to statelessness and other abnormal problems on perhaps a larger scale than in any other country in Europe, can only lead to dissatisfaction and to permanent unrest.

In our opinion the Rumanian Nationality Law of February 23, 1924, *is not only an infraction of the nationality clauses of the Rumanian Minorities Treaty*, but constitutes a veritable *challenge* to the legally effective existence of the Minorities Treaty itself, to the competence of the Council of the League of Nations, and to the sacred character of post-War diplomatic engagements involving the *benefits* of international guarantees. The signatories of

[1] Nor does the Law refer to Article 7 of the Rumanian Minorities Treaty relating to Jews. See the Rumanian Decrees of May 22, 1919, and August 12, 1919 regarding the Jews.

the Treaties of Peace are no longer known in present diplomacy as the Principal Allied and Associated Powers, whereas the Council of the League of Nations continues to exist as such. The *de jure* recognition by the League of certain States depends quite naturally upon the Treaties which they have signed and *ratified vis-à-vis* the League. The nationality articles are only a prelude to the main body of the articles affecting millions of people, by virtue of frontier changes, in the Minorities Treaties. If the States concerned accept, on the one hand, certain international obligations, they receive, on the other hand, certain international guarantees, which relating, as they do, to an important percentage of their populations, relate in the end also to the feeling of security in the State concerned. We believe that Rumania can ill afford to turn her back upon her Minorities Treaty.

*The Czechoslovak Nationality Law* (regarding Hungarians) of July 1, 1926, and in force on August 22, 1926 (Constitutional Law No. 152).

Under Article 3 (paragraph 1) of the Czechoslovak Minorities Treaty,[1] German nationals acquire Czechoslovak nationality *ipso facto* through habitual residence (Article 84, Versailles Treaty), whilst Austrians and Hungarians acquire Czechoslovak nationality if possessing *indigénat* in Czechoslovak territory prior to January 1, 1910 (Article 76, St. Germain, and Article 62, Trianon, to which Article 3 is made subject). As regards the Germans, no particular difficulty arises, the principle of Habitual

[1] Signed on September 10, 1919, ratified by Czechoslovakia on July 16, 1920, and placed under League of Nations guarantee on November 29, 1920.

Residence being simple enough and the provisions of the Prague Convention of June 29, 1920, being sufficiently satisfactory to avoid giving rise to complications. Furthermore, Article 1 (2 and 3) of the Czechoslovak Constitutional Law No. 236 of April 9, 1920, recognizes the criterion of habitual residence for the Germans of Czechoslovakia as referred to in Articles 3 and 4 of the Czechoslovak Minorities Treaty. This article and the paragraphs relative to the case read as follows:

> *Article 1.* "The following are Czechoslovak citizens: (2) Former citizens of the German Reich who have their regular domicile in the territories which previously belonged to the German Reich, and which devolve therefrom to the Czechoslovak Republic. (3) Former German citizens, who were born in the territory of the Czechoslovak Republic as children of German citizens, having their regular domicile in this territory."

The defect in the Constitutional Law limiting habitual residence to territory acquired from Germany where Article 3 of the Minorities Treaty and Article 84 of the Versailles Treaty refer to any of the territories recognized as forming part of the Czechoslovak State (see Chapter V) has been remedied by the Germano-Czechoslovak Convention of Prague. The nationality situation of the Germans of Czechoslovakia can therefore be considered as having been settled more or less in conformity with the provisions of the Czechoslovak Minorities Treaty, and there is, we believe, no law in force in Czechoslovakia relating to *ex-German* citizens which con-

stitutes a clear infraction of the clauses of the Minorities Treaty.

As for the *Austrians* of Czechoslovakia, these, together with the Hungarians, are referred to as requiring to possess *Heimatsrecht* or *indigénat* in Czechoslovakia prior to January 1, 1910. The Constitutional Law meets, in this case, the provisions of Article 3 of the Czechoslovak Minorities Treaty and Articles 76 and 62 of the St. Germain and Trianon Peace Treaties respectively, to which Article 3 is made subject. The following provision of the Constitutional Law should be noted, however:

> *Article 13. Heimatsrecht.* "The previous provisions relating to the acquisition and loss of *Heimatsrecht* remain in force in so far as they are not modified by this law.
>
> "For the obligation of the community to receive persons into the *Gemeindeverband*, the provisions of the Law of December 5, 1896, Official Bulletin No. 222, are, however, valid in the former Hungarian territory."

We have observed that the Austro-Czechoslovak Convention of Brunn (Chapter VIII) recognizes the Law of December 5, 1896, as a basis for the nationality of persons who were *public officials*. We remarked in Chapter VIII that we had no reason to welcome the reference made to this Law by the Brunn Convention, and this owing to the conclusions reached as to the efficacy of the Law. In Chapter VII we described how the Austrian Law of 1896 recognized the existence of *heimatlose*, or persons not possessing *indigénat*, that the

remedies proposed under that Law were necessarily of a *provisional* character only, that the contests which arose inevitably between the *acquiring* and *relinquishing* communes were ever on the increase up to the World War, and that these contests were so general and the final establishing of *indigénat* through *acceptance* and *discharge* applications so difficult to secure, that special provisions were made by that Law for the settlement of disputed cases by the *Supreme Administrative Court of Justice at Vienna.* If it proved necessary to refer so many cases to that Court where Austrians alone were concerned, one may well imagine what would have happened had the Law been made applicable to Hungary. It must be emphasized once again that the Law was never made applicable to Hungary under the Old Empire, that Hungary had a Law of her own regarding *indigénat* (1886), and that under that Law *Hungarian officials, for example, did not necessarily acquire rights of citizenship, as did Austrian officials, in a commune in which they exercised their functions. Thus the Czechoslovak Constitutional Law of April 9, 1920, where it lays down in its Article 13 that the Austrian Law of 1896 is "valid in the former Hungarian territory," applies a Law to the Hungarians of Czechoslovakia which was never in force in former Hungarian territory.*

If the Brunn Convention succeeded in settling outstanding nationality controversies on the basis of the Law of 1896, as between Austria and Czechoslovakia, thus perhaps providing a remedy for the nationality situation of *Austrians* in Czechoslovakia, such a remedy was never found through any Convention between Czechoslovakia

and Hungary, and it was natural, therefore, that in the absence of any such Interstate Convention with the non-ratification even of the Rome Convention (see Chapter VIII) by Hungary, and in view of the defaultive character of Article 13 of the Czechoslovak Constitutional Law of 1920, the nationality situation of the *Hungarians of Czechoslovakia* should sooner or later give rise to controversies of a grave nature requiring *international intervention.* When examining the situation of the Hungarians, it is necessary first of all to note that Article 3 of the Czechoslovak Constitutional Law of April 9, 1920, provides that "The previous provisions as to the acquisition and loss of citizenship remain in force, in so far as they are not modified by this Law." This would mean that the original Hungarian Law of 1886 regarding community membership (*Gemeindezugehörigkeit*) continues to be operative in that part of Czechoslovakia which was formerly Hungarian. This Law was, indeed, applied by Czechoslovakia to the Hungarians in question, despite the fact that it contains no provisions for the automatic possession of *indigénat* by public officials. But assuming for the moment that its provisions would in general cover the majority of cases envisaged by Article 3 of the Czechoslovak Minorities Treaty, one would naturally have supposed that the method of applying the Law adopted by Czechoslovakia would have been the same as that applied formerly by Hungary in these territories, and that any decisions taken by the Supreme Court of Hungary in the past relative to the construction set to the provisions of the Law would be similarly adopted by Czechoslovakia. Such has not been the case, however. The

essential *Sections, 9 and 10,* of the Hungarian Law of 1886 were originally interpreted by the *Supreme Administrative Court of Hungary* in the sense that the following conditions suffice for the acquisition of community membership: (1) Subscription *on one occasion* during a period of four years towards the commune expenses. (2) Any kind of services rendered during that period for the needs and purposes of the commune, and that on the fulfilment of these conditions communal membership was acquired *automatically* without any further formality. This interpretation was recognized by the Hungarian administrative authorities as decisive, and the Law was applied in that sense. At the outset many cases of *indigénat* were settled in Czechoslovakia on the basis of the above decision of the Hungarian Supreme Court. Later on, however, where the number of cases to be dealt with threatened to develop significant proportions, these were referred to the High Court of Prague for settlement. Owing to the decisions passed by this Court (1921, and No. 16455, October 6, 1923), a large section of the Hungarian population of Czechoslovakia suddenly found themselves faced with virtual statelessness (100,000 Schwartz). This decision, in fact, required that such inscription in the contribution lists of the communes must have been *uninterrupted* during the four years in question, and that *evidence of formal admission into a community had to be supplied.* We have observed in Chapter VII that, outside Budapest itself, even the communal lists referred to but seldom existed. And even where they existed, it would be practically impossible to find cases of four years' consecutive contributions

where such uninterrupted contributions were not required by Law. If we add to the above conditions, that of possessing *indigénat prior to January 1, 1910*, we may well imagine how difficult it was for the Hungarians in question to acquire Czechoslovak nationality *ipso facto* under Article 3 of the Minorities Treaty.

It is natural, in the circumstances, that the complaints should have been many, and that in the end petitions should be received on the subject by the League of Nations. The merits of a petition, for example, dated June 27, 1925, and on which the Czechoslovak Government submitted observations (C. 788, 1925, I) need not be gone into here.

*In order to remedy this situation, and doubtless with the best possible intentions in the difficult circumstances, the Czechoslovak Government promulgated the Law of July 1, 1926.* The purpose of this Law was to enable Hungarians, claiming to have acquired *indigénat* prior to January 1, 1910 (i.e. in accordance with the Treaties), to *obtain* Czechoslovak nationality *under certain conditions*, without insisting on the *uninterrupted* communal contribution or *formal admission* into a community.

These conditions require, amongst other things, a minimum of four years' uninterrupted residence in a commune of Slovakia or of Subcarpatho-Russia and *uninterrupted residence in Czechoslovak territory from the date of the expiration of these four years up to the date of the submitting of the individual application in pursuance of this Law.* Such application must, furthermore, be submitted within five years from the coming into force of the Law, i.e. before August 22, 1931. This period of

unbroken residence is not regarded as interrupted in cases of military service, absence for purposes of business, etc. Excluded from the right of application are persons, for instance, legally expelled from Czechoslovak territory and those who have carried on activities after October 28, 1918, outside Czechoslovakia on behalf of a foreign State. The form taken by such legal expulsion is not described, nor is it clear whether or no persons in despair of acquiring Czechoslovak nationality and having become resident abroad may avail themselves of the right of application provided by the Law.

The question that here concerns us is, however, one of principle. Article 3 of the Czechoslovak Minorities Treaty lays down that all Hungarians possessing *indigénat* prior to January 1, 1910, in any commune in Czechoslovakia (and not only in Slovakia and Subcarpatho-Russia) acquire Czechoslovak nationality *ipso facto*. Under the Law of 1926, however, a formal application is required from every individual, and all kinds of conditions are laid down which have nothing whatever to do with the stipulations of the Minorities Treaty.

In our opinion, the Law of July 1, 1926, even though it may provide a temporary remedy on a basis of what amounts to *naturalization*, constitutes an infraction of Article 3 (paragraph 1) of the Minorities Treaty signed by Czechoslovakia. We agree with Sir Walter Napier that the matter is one of International Law, depending, as it does, on Treaty, "and the question is not concluded by the decisions of the Czechoslovak Court, but is one that might well be referred to the Permanent Court of International Justice. On such a reference, that Court

would have to consider what the Hungarian Law was at the time the Hungarian Treaty came into force, and in deciding such a question it would naturally rely largely on the decisions of the Hungarian Court and on the practice of the officials of that country."[1]

As regards the nationality results of the Law of July 1, 1926, Sir Walter Napier remarks: "I understand that it is not accepted as a satisfactory solution of the question, and that out of a total of 100,000 Old Hungarians living in Czechoslovakia, only 2,000 have availed themselves of it. It is clear that something more ought to be done."[2]

Another critic writes: "For the many Slovaks whose papers were not in order it was easy enough for the new regime to obtain their regularization; but for the Magyar, especially for one of Chauvinistic propensities in the past, it was a very different matter, and it is unnecessary to explain what a weapon this new interpretation placed in the hands of officials. The complications and scandals which resulted led to the introduction of the *Lex Derer* in June 1926, on the basis of which the number of unregulated cases was considerably reduced. But those that still remained in 1928 probably affected between 20,000 and 30,000 persons. . . . To illustrate the desperate plight of these people, it must be added that without papers of legitimation they can neither leave the country (unless expelled) nor pursue certain pro-

[1] Paper on "Nationality in the Succession States of Austria-Hungary," read by Sir Walter Napier, D.C.L., before the Grotius Society on January 21, 1932.

[2] Report by Sir Walter Napier to the Minorities Commission of the International Federation of the League of Nations Societies, S.G. 1753, June 23, 1927.

fessions, and though not qualified to vote for Parliament or local affairs are liable for military service."[1]

It has been argued also that the *Jugoslav Nationality Law* of September 21, 1928, and especially its *Article 53*, contain provisions that are contrary to the stipulations of Article 3 of the Jugoslav Minorities Treaty. It will be recalled that Article 3 provides, as does Article 3 of the Czechoslovak Treaty, for residence or *indigénat* before January 1, 1910, as the case may be; we concluded in Chapter V that such residence need not necessarily be *habitual*, and that the principle of *Indigénat*, as in the case of the Czechoslovak Treaty, applied only to former Austrian and Hungarian nationals in Jugoslavia. It has also been explained that the ex-Kingdom of Croatia-Slovenia formed an independent *Bundesstaat* within the Austro-Hungarian Empire, with its own laws and administration, and that the importance of the possession of *indigénat* in that State was limited to questions of poor relief. (See Chapter VII.) As regards Bosnia-Herzegovina, we have noted that the principle of *Indigénat* was never known in these provinces (Chapter VII). The Law of September 21, 1928, is silent with respect to Bosnia-Herzegovina. On the other hand, its Article 53 (paragraph 1) expressly refers to Croatia-Slovenia:

> "Persons who at the date of the unification (December 1, 1918) were subjects of the former Kingdom of Serbia or of the former Kingdom of Montenegro, as well as such persons who at the date of the uni-

[1] Professor Seton Watson, *Slovakia, Then and Now*, p. 56.

fication were subjects of the former Kingdom of Croatia-Slavonia and had not lost such nationality in accordance with the provisions of the Treaty of Peace," are considered to be subjects of the Kingdom at the date of the coming into force of the present Law.

Thus the Law as far as these territories are concerned applies no conditions involving evidence of domicile or *indigénat*.

On the other hand, Article 53 (paragraph 2) reads as follows:

"Persons who were granted the nationality of this Kingdom by the Peace Convention with Austria (St. Germain), Articles 70 to 82; with Hungary (Trianon), Articles 61 to 66; with Bulgaria (Neuilly), Articles 39 to 40, or who have acquired this nationality in accordance with the provisions of these Peace Agreements" are considered to be subjects of the Kingdom, etc.

It is true that this article does not expressly mention Articles 51 (St. Germain) and 44 (Trianon) whereby Jugoslavia undertook to sign her Minorities Treaty, but the words "or who have acquired this nationality in accordance with the provisions of these Peace Agreements" can be considered, however, as covering the existence of the nationality provisions of the Jugoslav Minorities Treaty as foreseen by Articles 51 and 44 of the St. Germain and Trianon Treaties respectively.

Despite the somewhat unsatisfactory wording of this

article, and despite the provisions favourable to Slavs contained in paragraphs 4, 5, and 6 of Article 53, we are not in possession of sufficient evidence to conclude that the Jugoslav Nationality Law of September 21, 1928, constitutes an infraction of the nationality provisions of the Jugoslav Minorities Treaty.

All that we can say for the present is that the Law would seem *prima facie* to ignore the existence of the Minorities Treaty.

As for statelessness, Article 53 (paragraph 10) would tend to prevent this from arising very frequently as it considers to be Jugoslav subjects "persons born on the territory of the Kingdom, whose origin is unknown, and who cannot be identified as citizens of any alien State, nor obtain the citizenship of any alien State, etc." Of particular interest to those who are acquainted with certain minorities petitions are the provisions of the following paragraph 9 of Article 53 of the Law: Are considered to be subjects of the Kingdom "Persons who on the day of December 1, 1918, had a domicile in some community which was not included in the Kingdom, but were residing on the territory of the Kingdom in the employ of some public transportation or other service later taken over by the State, and who were thus serving the State, and who had, moreover, submitted an application with respect to acquiring nationality to the competent authorities."

The Laws and Decrees referred to in this chapter are drawn from a list covering the Baltic, the Central Euro-

pean, and the Balkan States.[1] They must serve as an illustration only of a tendency on the part of almost all the States Signatories of Minorities Treaties and Declarations to promulgate Laws contrary in spirit and in fact to the nationality provisions of those Treaties and Declarations. Despite the stipulation contained in each Minorities Treaty that its nationality provisions must be regarded as *fundamental laws*, there is little or no evidence of the said stipulation having been respected.

And it is these very State Laws and Decrees which have contributed more than any factor towards increasing the number of stateless persons where these, in many cases, might have acquired a nationality under the direct application of the Treaty provisions.

[1] Of much assistance also has been the *Collection of Nationality Laws*, edited by Richard W. Flournoy, Jr., and Professor Manley O. Hudson. New York. Oxford University Press. 1929.

## CHAPTER X

## THE DIFFERENT WAYS IN WHICH STATELESSNESS, ETC., MAY ARISE UNDER THE NATIONALITY PROVISIONS OF THE MINORITIES TREATIES AND DECLARATIONS. SOME EXAMPLES

On protracting the search for the causes of statelessness in the light of the operation of the Treaties it becomes increasingly difficult to reach any definite conclusions. Not only does the mechanism of the nationality provisions of the Interstate Conventions and State Laws and Decrees become more intricate, but what is more perplexing, all the provisions of the Minorities Treaties themselves, their scope, and their meaning contribute to the confusion. Conditions, theoretically clear when taken alone, are laid down for the acquisition of nationality, and these run against a series of obstacles in their application. For instance, where both habitual residence and *indigénat* are equally operative, as under Article 3 of the Rumanian Minorities Treaty, *in the event of contest*, which principle has precedence over the other? We have concluded that habitual residence has precedence over *indigénat*, but the Rumanian Government recognizes only *indigénat*. Then, in the cases of Articles 3 and 4 of the Minorities Treaties, which principle has precedence—that contained in Article 3 or the qualified birth clause in Article 4? Furthermore, in Article 6 of these Treaties does the principle of Ordinary Birth suffice in cases of doubt, or must all efforts at establishing acquisition

of nationality under Articles 3 and 4 have been exhausted first before it can be applied?

To these problems must be added those raised by the option clauses, so numerous in the Treaties, as also misunderstandings arising out of comparisons made between the English and French Treaty texts (for example, Article 3 of the Rumanian Minorities Treaty, English text, and Article 6 of the Polish Treaty, French text).

These questions require to be answered before the articles concerned can be strictly applied.

*For the purposes of the present work, we have adopted the following views:* POLISH MINORITIES TREATY. Habitual residence is the only principle applicable under Article 3 (paragraph 1). CZECHOSLOVAK TREATY, Articles 3 and 4. Habitual residence is applicable to Germans and *indigénat* possessed prior to January 1, 1910, to Austrians and Hungarians. JUGOSLAV TREATY, Articles 3 and 4. Ordinary residence applies to Bulgarians and *indigénat* possessed prior to January 1, 1910, to Austrians and Hungarians (excluding Bosnians and Herzegovinians). RUMANIAN TREATY, Articles 3, 4, and 7. Habitual residence is applicable side by side with *indigénat*; in case of dispute the former principle has precedence over the latter. Ordinary residence suffices for Jews (Art. 7). GREEK TREATY. Habitual residence applies to Turks, Bulgars, and Albanians (Art. 3). Ordinary residence may suffice in Greek Macedonia; the qualified birth clause (Art. 4) is not applicable to Albanians.

In cases where nationality can be claimed both through Articles 3 and 4 of the Minorities Treaties, the former should take precedence over the latter in a dis-

puted case. As far as the ordinary birth clause is concerned (Article 6 of the above Treaties), our view is that *in grave cases of doubt* the individual may choose whether or no he wishes to avail himself of the clause at once or await a final decision as regards any nationality acquired through one or other of the preceding Articles (3 and 4), for the acquisition of the nationality of the State in which a person is born may very often not coincide with his material interests.

Apart from the question of precedence and what might be considered as the logical rendering of the Treaty texts, the articles, beyond doubt, call for a certain degree of definition and interpretation. In this connexion the proceedings of the Germano-Polish Convention at Vienna (see Chapter VIII) and the decisions of Mr. Kaeckenbeck of July 10, 1924, are of particular interest, seeing that the Council of the League of Nations approved the Convention. We are thus authorized to accept the interpretations set therein to Articles 3 to 5 of the Polish Minorities Treaty as applying to the other Minorities Treaties also. These are the following:

(1) *Habitual Residence.*—Place in which the main source of existence is found, where one resides habitually and regularly without the intention of leaving; "un établissement sérieux, permanent, avec l'intention d'y rester" (Opinion of the Permanent Court, September 15, 1923). Such residence must cover a certain substantial period of time. It is abandoned when the place of residence is left *sans esprit de retour*, but not in cases where it is broken for purposes of attending schools elsewhere, professional instruction, etc.

(2) The habitual residence of parents referred to in Article 4 of the Minorities Treaties must have been established at least not later than the date fixed for habitual residence in the preceding Article 3.

(3) The right of option is only enjoyed by persons who have *ipso facto* acquired nationality under the Minorities Treaties provisions.

(4) Article 5 of the Minorities Treaties is not applicable to persons opting under Article 3; it applies to options made under specific Peace Treaty articles by persons of majority race, choosing whether or no they will acquire the nationality of the State with which they have majority racial bonds. *This article is thus not placed under international guarantee*, as it does not concern minorities in the sense of the Minorities Treaties (Kaeckenbeck Decision No. 10).

If it is difficult to establish the full extent to which the strict application of the Minorities Treaties would remedy statelessness, etc., it is easier to establish the cases in which such application would have no certain effect or no effect whatever. Here the States concerned need not necessarily be to blame, but rather the incompleteness or lack of clarity, as the case may be, of the Treaty provisions.

We submit herewith certain cases in which the possibility of effective *international intervention under the Minorities Treaties* would either be doubtful or wholly excluded:

(1) *Recognition of Option Rights.*—To what extent are

the States for which persons opt under Articles 3 and 4 of the Minorities Treaties bound *under these Treaties* to recognize such option and grant their nationality to the optants? In the first place, it should be noted that Article 5 of these Treaties does not refer to minorities; its application relates to majorities only. Hence in all cases where persons having *ipso facto* acquired the nationality of a State in which they are minorities, have opted for the nationality of a State in which they would form a majority by race and have been refused the nationality of that State, such persons would be excluded from the operation of the Minorities Treaties. The same persons may, at the same time, find themselves in the position of having lost the nationality of the State which they acquired *ipso facto* through the mere fact that they have opted for another nationality. No provision exists in the Minorities Treaties whereby such persons, in those circumstances, must be considered as having retained the nationality which they had acquired *ipso facto*. Statelessness might easily arise here, and the minorities articles would not be applicable.

Furthermore, persons acquiring a nationality *ipso facto* and opting for a nationality of which they would form a minority by race, and being refused that nationality, have no recourse, as far as we have been able to ascertain, to international protection under the minorities articles. Statelessness might easily arise here. In such cases, everything would depend upon the scope given to Article 3 of the Minorities Treaty—for instance, whether or no Articles 81 and 65 of the St. Germain and Trianon Treaties respectively could be held to form part of

Articles 3 of the Rumanian, Czechoslovak, and Jugoslav Minorities Treaties. If we apply M. Kaeckenbeck's decision regarding Article 5 of the Polish Minorities Treaty, we can only reach the conclusion that the said articles do not form part of Article 3 of those Minorities Treaties.

(2) *Redintegration.*—According to Articles 74 and 77 of the St. Germain Peace Treaty and their corresponding articles in the Treaty of Trianon, persons not acquiring Italian, Czechoslovak, or Jugoslav nationality in conformity with Articles 71, 72, and 76 of St. Germain (corresponding articles, Trianon) *ipso facto* acquire the nationality of the State in which they had their previous *indigénat.*

Assuming that in the case of Mr. X such previous *indigénat* were established in Hungary, by virtue of what Treaty article placed under international guarantee would Hungary be forced to grant him Hungarian nationality? Neither the Hungarian nor the Austrian minorities articles are made subject to any other Treaty articles, and as Mr. X could scarcely be in the possession of *indigénat* in Hungary *at the time of the coming into force of the Treaty*, seeing that *previous indigénat* is expressly referred to, the application of the Minorities Treaty could not help him. He would become stateless unless he could avail himself of the ordinary birth clause. Even then, if Hungary maintained that he should by rights acquire Czechoslovak or some other nationality, it would be difficult to insist upon the birth clause until all the other methods of nationality acquisition had been exhausted, and if he had happened to have been born in

Italy, no international intervention on a basis of birth would be possible. We understand that it is this very problem of redintegration that has caused so large a number of cases of statelessness to arise amongst Hungarians of Czechoslovakia.

(3) Inability to establish personal or parents' *indigénat* or personal place of birth.

(4) Inability to establish personal or parents' *indigénat* when born outside the territories in which the Minorities Treaties are applicable.

(5) *Nationality Contested.*—Mr. Z has an effective habitual residence in Rumania, but he possesses *indigénat* in Hungary. The two States contest his claim to their nationality. According to the minorities articles, taken separately, he *ipso facto* acquires both nationalities. International intervention in such a case could not take place other than on a basis of birth. But as long as the dispute is not settled between the States concerned, i.e. as long as doubt remains as regards which nationality he possesses, could the ordinary birth clause be made operative? Suppose that he was born in Poland, could Poland in the circumstances be forced under Article 6 of the Polish Minorities Treaty to accept Mr. Z as her national? This is a doubtful case, and certainly many of this nature have arisen. Of course, if Mr. Z was born in Germany, Italy, etc., his position *vis-à-vis* the Minorities Treaties would be still more difficult. There is good reason to believe that a large number of people have been made stateless owing to such interstate nationality contests.

(6) Cases of dual nationality in general.

(7) *Denationalization or Denaturalization.*—Mr. W, Polish by race, having *ipso facto* acquired Czechoslovak nationality, is denationalized along with others belonging to the majority races in Czechoslovakia. In the absence of differentiation of treatment, could international intervention be possible? Mr. J, a Hungarian by race, naturalized Czechoslovak under the Czechoslovak Law of July 1, 1926, and later on denaturalized for reasons that would constitute an infraction on the part of the Czechoslovak State of one or other of the minorities articles—is the position of a naturalized person, minority by race, similar to that of a person who has acquired nationality *ipso facto* as far as the application of the minorities articles is concerned? We would conclude that it was, but the Municipal Laws of the States differ considerably on this subject, and anything in the form of an international codification of these has not as yet been achieved.

We are under the impression that the number of cases of statelessness and of double or contested nationality that cannot be settled by the strict application of the Minorities Treaties equals, if it does not exceed, the number that could be settled by these Treaties, especially in the territories of the former Austro-Hungarian Empire. These territories are so interlaced by the previous laws in force and the principle of *Indigénat* is such an inefficient criterion for nationality acquisition, the dates on which the respective Treaties came into force are so varied and the problem of pension payments so formidable that

the only practical solution in a general sense that we can at all envisage for the moment would be the conclusion of an agreement between the States concerned, such as the Convention of Rome of April 6, 1922.

In submitting these conclusions, we have scarcely touched at all upon the nationality situation in the Balkan and the Baltic States. This is because no obvious cases of statelessness have been brought to our notice as constituting infractions of the Minorities Treaties or Declarations to the same degree as those which have arisen in the Successor States of the Austro-Hungarian Empire. Other is the case of Turkey, where, as has been already explained in a previous chapter, the nationality articles of the Lausanne Treaty were not placed under international guarantee. This does not mean that infractions have not taken place or that statelessness does not arise. The scandal of the Armenian refugees speaks for itself. But in the absence of a sound legal basis upon which intervention would be possible, these Treaty defects must not be enlarged upon here. One would imagine that statelessness among Bulgarians from Turkish Thrace, refugees in Bulgaria has considerably diminished as a result of the Turko-Bulgarian Convention of October 18, 1925, and it is to be hoped that the nationality situation of the Albanians in Greece is approaching a final solution.

As regards Memel, the Lithuanian Declaration remains in force above and beyond any conditions that may be

laid down as regards the possession of Memel citizenship.[1] It may prove that the provisions contained in the Treaties, Conventions, etc., signed by the Baltic States with Russia are not in accordance with the principles accepted by those States under their Minorities Declarations. Cases of statelessness amongst Jews in Latvia were, for example, brought to our notice through Press articles in 1926. Also the fact that no really satisfactory relations as yet exist between Poland and Lithuania certainly gives rise to nationality problems of a grave nature amongst which statelessness must certainly figure.

[1] See Memel Convention, signed at Paris on May 8, 1924, ratified by the Lithuanian Government on September 27, 1924. League of Nations Treaty Series, vol. xxix.

Under Article 11 of the Convention, the general Minorities procedure adopted by the Council of the League of Nations (see Chapter XI) is made applicable *ipso facto* to minorities petitions regarding Memel territory (Author).

## CHAPTER XI

# THE LEAGUE OF NATIONS: ITS RESPONSIBILITIES AND ACTIVITIES ARISING UNDER THE TREATIES

It is natural that an examination of the preceding chapters should lead the reader to ask what the League of Nations has done to secure the enforcement of the Minorities Treaties and Declarations, and to alleviate false or improper situations arising out of Interstate Conventions and State Laws and Decrees where these constitute infractions of provisions placed formally and officially under international guarantee.

The reply to this question requires no diplomatic circumvention of facts. The powers of the League and the limits set to its competence are clearly defined. In the first place, the said Minorities Treaties and Declarations only concern the Council of the League where they relate to the minorities by race, language, or religion of the Signatory States in question. In the second place, the League's Council cannot, by virtue either of the Peace Treaties or by virtue of any International Treaty, Convention, or Agreement approach the Signatory States concerned *collectively*—it can only approach them *individually*. In other words, only some thirty out of some hundred million people covered by the *so-called* Minorities Treaties can avail themselves of the clauses placed under international guarantee, and these thirty million people *do not legally constitute a collective body vis-à-vis*

the League of Nations. The Treaties are, in fact, contracts between a certain number of Powers or States on the one hand and a particular State on the other. The Council of the League of Nations cannot do otherwise, therefore, than treat the Signatory States as *individual States bound by contract*. Thus the League of Nations is not empowered to act on its own initiative under the Treaties taken collectively. The Treaties were, in a sense, imposed upon the League of Nations; the League only agreed to their being placed under international guarantee after they had been signed and ratified. The Declarations, however, constituted contracts as between certain individual States and the Council, but these were made individually.

For these reasons the League of Nations is, at present, powerless to take action on controversies regarding nationality if these controversies involve more than one individual Signatory State of a Minorities Treaty at a time. If, for example, a minorities petition addressed to the League of Nations refers to nationality conflicts in the Successor States of the Austro-Hungarian Empire, i.e. to more than one State, the petition must be regarded as *not receivable*, if owing to such a collective reference alone. It is only when this fact is realized and when one has ascertained, as we have, that the majority of disputes regarding nationality concern more than one State alone, that we can begin to understand the futility of insisting upon the League's intervention in questions in which it is not, at the present time, *competent* to intervene.

Furthermore, even where the competence of the

League's Council is formally established as in each Minorities Treaty, the Council may even then only act where the *information* which it receives is of a nature to suppose that an infraction or a danger of an infraction on one of the minorities clauses existed. Such information reaches the Council in the form of a petition. The petition is only *receivable* if (*a*) it has in view the protection of minorities in accordance with the Treaties; (*b*) it is not submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms part; (*c*) it emanates from a properly established source; (*d*) it abstains from violent language; and if (*e*) it contains information or refers to facts which have not recently been the subject of a petition submitted to the ordinary procedure.[1] The Council of the League of Nations has passed several resolutions regarding the procedure to be followed in the treatment of minorities petitions. We do not propose to deal with these resolutions in detail. It is sufficient to explain that petitions are, in the first instance, examined by the Minorities Section of the League's Secretariat in Geneva, and that those which meet the conditions of receivability above mentioned are, except in urgent cases, first forwarded to the interested Governments for observations. The interested Government submits its observations to the Secretariat within defined time limits, and these observations, together with the petition in question, are forwarded to the Members of the Council for their information. The petition and observations are then examined by a Committee of the

[1] League Council Resolution of September 5, 1923.

Council composed of the Council's President and three to five representatives of States on the Council which are disinterested, i.e. not neighbours of the State against which the complaints in the petition are lodged. The State concerned is, of course, never a member of such a Council Committee. The question raised by the petition continues to be treated as information only, unless or until one or more members of the Committee ask that it be inscribed on the Council Agenda. The foregoing summary of the procedure, although very incomplete, suffices to show the degree to which the Council's competence in the treatment of nationality cases, for example, arising in the States bound by Minorities Treaties or Declarations, is *limited.* Much has been written on the subject of this *Minorities Procedure*, and it is generally considered by international unofficial organizations[1] that the Council's competence is too restricted, that greater publicity should be given to the treatment of the petitions examined but which do not reach the Council's Agenda, and even that a Permanent Minorities Commission similar to that of the League's Mandates Commission should be created to replace the present Council Committee system. It should be observed, however, that the States Signatories of Minorities Treaties and Declarations are inclined to take the view that the competence of the Council is, if anything, very much larger than was foreseen at the time when the Treaties and Declarations were signed. It is unlikely that these States would facilitate wider intervention in their affairs by the Council where, as we have already

[1] See Chapter XII on the activities of International Societies.

seen, they find it already difficult or unpleasant enough to carry out their existing obligations.

All that can be safely said with respect to the present procedure is that it has its merits and not only its faults. For those not acquainted with the activities of the Council Committees it is naturally very difficult to appreciate a procedure which necessarily involves a large percentage of negotiation that cannot be followed by the public. Those, however, who have had some experience of the functions of these Committees can only be convinced that the practical results achieved have in many cases been possible only through such direct negotiations with the States concerned. States do not like to have their private affairs dragged before the public any more than individuals do, and the psychology of a State does not sensibly differ from that of an individual. A man who has made a mistake under law sometimes appreciates a hint from a disinterested quarter, and still more so if it comes from a quarter which would have to judge him publicly if he persists with his mistake; but if he knows that he is going to be dragged before the Court, he will devote his energy to preparing his defence and to proving that he has not made a mistake and that he has acted in his own rights. Similarly with defaulting States: if publicity is imposed upon them at the outset, they will face their judges with all the confidence of men supported by power and possessing a far wider knowledge of the circumstances of the case than the judges. The Council of the League does not possess the right of investigation; that is to say, it cannot examine a situation on the spot under Treaty, and is powerless to send

agents to a country without that country's assent. For example, Members of the Minorities Section of the League rarely travel in the States Signatories of the Minorities Treaties and Declarations. The procedure naturally has its drawbacks, but *given the limited character of the Council's competence*, the maximum of information within these limitations is undoubtedly secured by the Council Committees. *There is evidence of the suppression of certain articles in laws already promulgated, of draft laws being submitted for criticism, of the replacing of old laws by new ones—in fact, of the readjustment of legal systems involving millions of people secured through negotiation under the existing minorities procedure; and it may be added that several of these laws have related to nationality.* As has already been explained, however, most of the nationality disputes arising out of the Treaties affect more than one State, and it is this fact which makes it impossible for the League's Council to intervene in a *general* way and remedy the situation of the stateless, especially in the territories of the Successor States of the Austro-Hungarian Empire. Where the League's competence might be said to be more direct, such as in the territories of Danzig Free City and Upper Silesia, a mechanism exists which provides for local inquiries and investigation. The Danzig Nationality Law of May 30, 1922, is very complete, and its provisions cannot be amended without the approval of the Council. In Upper Silesia, where the Nationality Articles 25 to 30 of the Convention are not placed directly under international guarantee, a Court of Arbitration exists, however, and settles on the spot such nationality problems as may

arise and which are not brought to the notice of the League by one or other of the interested Governments.

It could only be on the initiative of one or more States Members of the League *acting outside the sphere of Treaty engagements* that the question of nationality in the territories of the ex-Austro-Hungarian Empire, for example, could be inscribed in the Council's Agenda. A State Member might draw the Council's attention to the advantages to be gained in the convening of a general conference of the Successor States as that convened in Rome in April 1922. The convening of such a Conference would, we believe, go far towards settling the problem of statelessness in Central Europe, but hitherto no Council Member has taken such an initiative. It is here that the activities of certain International Societies would be particularly welcomed, for it lies beyond doubt that the placing of the question of statelessness on the Council Agenda would lead to a more general discussion of nationality issues and would strengthen the position of the Council without irritating the susceptibilities of any particular State.[1]

Outside the sphere of Treaty engagements, the League of Nations has taken steps to combat statelessness, such as through the *Nansen passport for Russian or Armenian refugees*, through the Transit Conferences, and through the Hague Conventions for the Codification of International Law.[2] It is to be hoped that through one or other of these agencies the question of nationality as it

[1] See Chapter XII regarding the activities of International Societies.

[2] See Chapter XIII.

arises *under the application of the post-War Treaties* may be placed on the Agenda of the League of Nations.

If we do not here describe in detail the admirable work done by the High Commission for Refugees[1] and the labours of the Codification[2] and Transit Conferences, it is because these activities lie outside the scope of the responsibilities shouldered by the League of Nations *under the Peace Treaties and under the Minorities Treaties and Declarations.*

Finally, the recent withdrawal of Germany from League Membership and from her Permanent Seat on the Council sets a further and very drastic limitation to the authority of the League of Nations and to its competence in solving nationality problems effectively as these arise under the various Treaty provisions.

[1] Note the Convention "relating to the international status of refugees" adopted on October 28, 1933.

[2] There have been no further Codification of International Law Conferences since 1930. (Author's Note, March 1934.)

## CHAPTER XII

# THE ACTIVITIES OF INTERNATIONAL SOCIETIES WITH REGARD TO NATIONALITY PROBLEMS ARISING OUT OF THE TREATIES

ONLY a few of the important International Societies, etc., have seriously studied the nationality problems arising out of the Treaties. The *International Law Association*, the *Interparliamentary Union*, and the *World Alliance for Promoting International Friendship through the Churches*, for example, have hitherto paid little or no attention to this question. This is to be regretted, inasmuch as these organizations are known the world over and carry weight; one would have thought that problems of nationality, involving statelessness and other undesirable defects requiring legal readjustment, would fall precisely within the natural sphere of their activities. It has been left to a small handful of younger organizations to shoulder the burden of enlightening public opinion on one of the most complicated and delicate questions which have confronted Europe since the World War. Fortunately, these organizations, although few in number, are powerful and active, and can boast of leaders and members who possess the necessary knowledge and moral integrity to claim serious attention. Foremost amongst these organizations are the *International Federation of League of Nations Societies*, with its Secretariat in Brussels, and the *Women's International League for Peace and Freedom*, with its Secretariat in Geneva.

On August 20, 1926, Mr. Ador, *President of the International Committee of the Red Cross*, had addressed a letter to the Secretary-General of the League of Nations with a view to securing that the general problem of nationality be placed on the Agenda of the League's Council owing to the increase in the number of stateless persons. As no Member of the Council, however, decided to take the necessary initiative, it was felt that public opinion should be acquainted at once with the true situation, and the two organizations above mentioned set to work accordingly. They were joined in their efforts by the *Joint Foreign Committee of the Jewish Board of Deputies* (London) and other Jewish groups, and later by the *International Council of Women*. The problem was approached by these societies from different angles; in some cases the field of activity recommended was almost wholly limited to the application of the nationality articles of the Minorities Treaties; in other cases this field was extended to the efforts made by the *League of Nations* to face the problem of statelessness through the proposed extension to the stateless of the Nansen passport system, limited hitherto to Russian and Armenian refugees; through the recommendations adopted by the Communications and Transit Conferences of September 2, 1927, etc., relating to identity certificates and visas for persons who were stateless and whose nationality was contested; and through the Hague Conferences for the Codification of International Law.

This work is, however, concerned only with such activities as bear upon the nationality provisions of the Peace Treaties. We must, therefore, confine ourselves to

reviewing the efforts made by these societies to draw the attention of the public, as also of the States Members of the League of Nations, to the nationality provisions of these Treaties, and of the Minorities Treaties, Interstate Conventions and State Laws and Decrees relating to or arising out of these.

In the first place, it should be noted that not one of these societies has made the *Peace Treaties*, as such, the subject of its research. Their resolutions invariably bear upon the nationality provisions of the *Minorities Treaties*. Thus, for example, in the case of the *International Federation of League of Nations Societies*, it has been the Permanent *Minorities* Commission of that Federation which has *usually* had before it the nationality questions figuring on the Federation's Agenda. Secondly, where the Minorities Treaties have been referred to, these have been invariably those signed by the *Successor States* of the ex-Austro-Hungarian Empire; practically no reference has been made to the nationality clauses of the Neuilly Treaty with Bulgaria, the Greek Minorities Treaty, or the Declarations signed by Albania and the Baltic States. And if certain Italian Laws have been submitted to criticism, this is due to the fact that Italy is included amongst the said Successor States. These societies have indeed felt from the outset that the post-War nationality problems were of a particularly serious character in Central Europe, that is to say, in Czechoslovakia, Austria, and Hungary, and in such territories of Poland, Rumania, Jugoslavia, and Italy as originally formed part of the Austro-Hungarian Empire.

The above-mentioned Federation and its Permanent

Minorities Commission have worked tirelessly for the past ten years to secure a solution for the desperate cases of statelessness and contested nationality arising out of Treaty provisions in these territories.[1] The Commission has had numberless reports before it, drawn up by competent authorities, in which not one of the Treaty articles in question have been overlooked; it has made exhaustive studies of the principle of *Indigénat* and of the laws in force in the old Austro-Hungarian Empire; it has examined the present laws in the light of the Treaty provisions; it has delved into all the existing Interstate Conventions, and it has secured the acceptance by the Assembly of the Federation of a number of resolutions drafted after much labour, research, and negotiation. The Federation began by recommending urgently the ratification by all parties of the Rome Convention of 1922,[2] and when this failed to meet with response on the part of the Governments concerned, it passed a resolution inviting the League of Nations to take the necessary steps to secure a settlement of such questions as arose that related to statelessness.[3] In the following year the Assembly of the Federation unanimously adopted a resolution asking the Council of the League of Nations itself to set up a Court in agreement with the Successor States, which would dispose of nationality cases in accordance with the provisions of the Minorities Treaties and Treaties of Peace in the territories of the ex-Austro-

[1] The Commission was on many occasions assisted by the Juridical Commission of the Federation.

[2] Warsaw Assembly, July 1925.

[3] Aberystwyth Assembly, 1926.

Hungarian Empire.[1] Having met with little or no encouragement, and having failed, despite these efforts, to awaken the necessary interest for the inscription of the question on the League Council's Agenda, the Federation from that year onwards has concentrated less and less on the nationality problem as it arose under the Treaties and more and more on the position of *stateless persons in general vis-à-vis* International Law. Its *Permanent Minorities Commission*,[2] however, has continued to have reports before it which are unquestionably of great value to students of the Treaties.[3] It is, in fact, through reading the minutes of the meetings of this Commission, presided over for so long and with such competence and striking impartiality by *Lord Dickinson of Painswick*, that we are in a true position to appreciate the quality of the work that has been done behind the scenes. For scholarship, tenacity, and tact it would be difficult to find a more able critic of the nationality provisions of the Minorities Treaties than *Sir Walter Napier*. It might be said that this admirable jurist has devoted the major part of his time since the *International Federation of League of Nations Societies* was created (December 1919) to studying the nationality situation in the territories of the ex-Austro-Hungarian

[1] Berlin Assembly, 1927.

[2] Or Standing Committee.

[3] At the Commission's meeting in Brussels in 1928 Sir Walter Napier submitted a resolution asking that the Permanent Court of Justice should give an advisory opinion on the question as to whether the legislation in force in the States Signatories of Minorities Treaties was in fact in conformity with the nationality provision of these Treaties. The resolution was not adopted.

Empire from its every aspect. No work dealing with this subject would be complete without a thorough perusal of his reports submitted to the Permanent Minorities Commission of the Federation, to the Executive Committee of the League of Nations Union, or to the Grotius Society. There are other members of this Commission who have never ceased to devote their time and energy to the study of the nationality contests arising out of the Treaties, and foremost amongst these are Dr. Kunz, of the Austrian League of Nations Society, Professor Rauchberg, of the German League of Nations in Czechslovakia, and Professor Ruyssen, Secretary-General of the Federation. It is unfortunate that the earlier efforts of the Commission should have met with so little success, and the only reasonable explanation that one could offer for the abandoning of specific for general demands would seem to lie in the *highly political character* attached by the Governments concerned to the study of specific nationality problems. That the Commission and even the Plenary Congress of the Federation might have gone a long way to secure a settlement of interstate nationality conflicts is illustrated by a resolution passed by the Plenary Congress at Warsaw in 1925. The Commission had had a memorandum before it drawn up by M. de Lukacs, of the Hungarian League of Nations Society, and describing the discrepancies between Czechoslovak legislation and the Old Hungarian legislation regarding *indigénat* (*Heimatsrecht*). The Commission had appointed a small Committee to examine the memorandum, and this Committee was composed of the representatives of the Czechoslovak Society (Senator Brabec), the Hungarian Society, the

Rumanian Society (Professor Djuvara), and of the German Society in Czechoslovakia. This Committee submitted a resolution to the Commission in which the two interested Governments, namely, the Czechoslovak and the Hungarian, be invited to open negotiations with a view to reaching a satisfactory solution as regards the establishing of *indigénat* and, in consequence, of the nationality of the people concerned. The people in question numbered several hundred thousand at the time and were mainly Hungarians. It is interesting, therefore, that the Czechoslovak and Rumanian representatives should have supported the resolution as they did. The Warsaw Assembly adopted the resolution and the Secretary-General of the Federation was instructed to ask the Czechoslovak League of Nations Society to use all possible influence with the Prague Government to give effect to the resolution. Had the Czechoslovak and Hungarian Governments acted on this recommendation, a great deal of misunderstanding and unhappiness would have been avoided, and it would not have been necessary for Czechoslovakia to promulgate the difficult and far from satisfactory Law of July 1, 1926, to which we have already referred at some length in another chapter. The *specific* character of the Commission's work regarding nationality cannot be said to have been abandoned, however, for we have evidence that Lord Dickinson, Sir Walter Napier, and the British League of Nations Union are still concerned with the ordinary birth clause of the Minorities Treaties, and that the Austrian League of Nations Society is engaged in taking active steps to ascertain the exact number of stateless persons at present living in Austria.

In connection with Stateless Statistics, and here the Federation has encountered also many obstacles in its history, illuminating articles have been written by Dr. Joseph Kunz, of Vienna, which go to prove that an investigation made by the Austrian League of Nations Society in July 1931 resulted in more than 2,500 communications covering 15,000 individual cases of statelessness arising mainly if not wholly out of the Treaties.

As regards the activities of the *Women's International League for Peace and Freedom*, the importance of these cannot be overestimated. Their pamphlets published since 1930 and entitled "Statelessness, etc," have contributed most effectively towards making the nationality problem in Central Europe more generally known to the public. This Society went to the extent of convening a special Conference in Geneva in September 1930, to which were invited representatives of the Federation, the International Council of Women, the League for the Rights of Man, the Society of Friends, the Society for the Prevention of War, the International Migration Service, the League of Jewish Women, etc. A resolution was passed asking that a commission be appointed by the League of Nations to deal with the question of statelessness, and reports were circulated dealing with this subject. Notable amongst these reports were those submitted by Madame Anna Aszkanazy, Miss Emma Cadbury, Miss Klare Marck, Dr. Egidio Reale, Madame Eugenie Meller, and Professor Ruyssen. These reports, and especially that of Madame Aszkanazy, deal with the principle of *Indigénat* in some detail, and throw much valuable light on conflicts regarding nationality arising out of the Treaties. The

number of stateless persons in Czechoslovakia is given as amounting to 80,000. Miss Cadbury's report describes in clear terms the unhappy situation of stateless persons who belonged to the official classes of the ex-Austro-Hungarian Empire. Statelessness amongst persons to whom pensions were due and amongst Jews in Central Europe is referred to in most of the reports. Madame Meller advocated the principle of Habitual and Principal Residence as sufficing to remove any doubts as to the possession of nationality. The zeal and energy of Miss Mary Sheepshanks, who has devoted much time to studying nationality problems on the spot and whose investigations have led often to almost inaccessible quarters, has contributed vastly to the good work done by this Society.

The activities of the *Joint Foreign Committee of the Jewish Board of Deputies*, and especially to the late Mr. Lucien Wolf, have in many respects led to more practical results than those of the other Societies. It is true that the field is smaller, but the difficulties encountered by the Society would have been insurmountable had it not been for the personality of Mr. Wolf. Much might be written, and should indeed be written, about this remarkable man, who with deep sincerity and tact penetrated the jungle of the Peace and Minorities Treaties and engaged almost single-handed with the statesmen of the day. His correspondence with the Polish, Hungarian, Rumanian, and other Governments regarding their respective nationality laws has, on more than one occasion, led to rectifications from which not only Jewish populations benefited.

On the whole, however, one cannot but be astonished that with so much activity pursued by such substantial

organizations as these, no single State Member of the League's Council or Assembly has hitherto asked that the question of nationality in the Successor States of the ex-Austro-Hungarian Empire be placed on the Agenda of the Council of the League of Nations.

## CHAPTER XIII

## CONCLUSIONS

*The Pre-War and Post-War Treaties compared—The French Declaration of the Rights of Man and the States Signatories of the Minorities Treaties, notably the Little Entente—Conclusions regarding the Nationality Provisions of the Minorities Treaties and of the Treaties of Peace at present in force.—The Position of the League of Nations—Nationality and the Existing European Frontiers.—The Passport Problem—The Position of Stateless Persons—Possible Remedies*

IN Part I of this work we have established the fact that almost all the Peace Treaties concluded during the hundred years preceding the late World War contained special provisions regarding nationality, and that these provisions varied considerably according to circumstances. A fair comparison between these provisions and those contained in the post-War Treaties is only possible where the circumstances in each case are taken into account. It would, for example, be highly premature to suppose that a fixed code of principles governing nationality acquisition under Treaty form could be applied to any given quarter of the world; local conditions would necessarily have to be taken into account, as also the level of nationality consciousness reached by the peoples. As this work deals almost wholly with the Continent of Europe, the pre-War Treaties referred to for comparison should be those which have related to this Continent.

The pre-War European Treaties favoured, in general,

the principle of Domicile or Habitual Residence as a criterion for the *ipso facto* acquisition of nationality in ceded or annexed territories. In several instances this principle was not effective unless combined with either that of descent or that of birth. Such combinations led to a considerable amount of controversy, especially as the Municipal Laws of the European States differed as widely from one another as they do today. Descent or birth, taken alone, scarcely, if ever, figured in the Treaties, the latter being inserted only as an alternative criterion to some other principle failing in effective application.

The post-War European Treaties have similarly favoured, in general, the principle of Domicile or Habitual Residence. Unfortunately, however, this principle was to a large extent replaced by that of Rights of Citizenship or *Indigénat* or *Heimatsrecht* in the territories that formerly composed the Austro-Hungarian Empire. This is the first point to be noted, as this principle was practically unknown to the Treaties prior to the late War. As regards the principle of Descent, this figures in the Minorities Treaties arising out of the Peace Treaties in the form of Qualified Birth, i.e. Birth and Descent, and constitutes a departure from any previous Treaty provisions. Its insertion in the Minorities Treaties was calculated to facilitate the acquisition of nationality, where this had not been acquired through residence or *indigénat*; the reasons for which it does not figure in the minorities clauses of the St. Germain and Trianon Treaties regarding the acquisition of Austrian and Hungarian nationality are not clear. As for the Birth principle, this is, strictly speaking, not a feature of the Peace Treaties provisions, as such, but

rather of their minorities clauses and of the nationality clauses of the Minorities Treaties. To what extent these birth clauses involve the principle of Descent has not been determined in a general way, despite the construction set to them by the Brunn Convention between Austria and Czechoslovakia. In this connexion it should be noted that the qualified and ordinary birth clauses of the Minorities Treaties constitute an interesting and progressive departure from the ordinary framework of the Peace Treaties, past and present—at all events, from the standpoint of the Law of Nations. As regards the principle of Redintegration or Resumption, known to some of the pre-War Treaties, these, with the exception, perhaps, of the unratified Bessarabian Treaty, have been abandoned. *Ipso facto* acquisition of nationality *en masse*, of fairly regular occurrence in the pre-War Treaties, has been only approached at all closely under the provisions of the Versailles Treaty relating to Alsace-Lorraine. But where, in the past, such wholesale acquisition was usually accompanied by right of option, these option rights were not accorded the population of Alsace-Lorraine under the Versailles Treaty. It should be noted here that the population of Alsace-Lorraine was also denied this elementary right under the Frankfort Treaty of 1871. Generally speaking, however, the post-War Treaties make allowance for such rights of option, and the option delays, although perhaps not as reasonable as those provided for a hundred years ago, would seem theoretically to be fair. Under the Austro-Russian Treaty of 1815 the option delay covered a period as long as six years, and as this Treaty related to territories in which the majority of

serious nationality problems have arisen since the late World War, *the Treaty drafters might have done well to bear the precedent of 1815 in mind and to have provided for a six instead of a two years' option delay in the Minorities Treaties.* It is certain that the particular one year or six months' option delays contained in the St. Germain and Trianon Treaties could scarcely be regarded as sufficient, and we have evidence that certain of the States concerned have had to meet the difficulties that arose in consequence through special legislation. When special legislation of this kind had to be resorted to, one can conclude that Treaty defects are partly responsible for it. Thus, if Czechoslovakia found it necessary to resort to wholesale *naturalization* for Hungarians, as under the Law of July 1926, such action, although to be deplored, must have been due, at all events, in some measure to the defective character of the Treaty texts. Such wholesale naturalization was on several occasions resorted to in the past, where the pre-War Treaties failed to meet the requirements of the situation. But where the pre-War Treaties had only the comparatively simple principles of Domicile, Descent, or Birth to apply to the populations affected by territorial changes, certain of the present Treaties included a new principle governing nationality acquisition, namely, that of *Indigénat*, and experience has proved that the provision made for the application of this principle in lieu of that of residence has contributed more than any other factor to the unsettled character of the nationality situation in Central Europe to-day. The Peace Treaties of St. Germain and Trianon, by requiring the possession of such *indigénat* in the Successor States

of the Austro-Hungarian Empire, have given rise to a situation which calls for urgent settlement. It might be too strong to state that there will be no peace in Central Europe until the Successor States of that Empire reach agreement as to the conditions under which *indigénat* is possessed somewhat along the lines of the Rome Convention of 1922, for so much time has passed that such agreement might scarcely be practicable now; but it is our established opinion that had these States taken measures some years ago to interpret in an enlightened and more generous manner the nationality provisions of these Treaties and of the Minorities Treaties arising out of them, the political crisis now confronting Europe might quite possibly in certain aspects have been avoided. Since 1815 the frontiers of Europe, with those of the German States after 1871 excepted, have never been submitted to such extensive revisions or changes as they have done since 1918. The Peace Treaties had, in consequence, nationality problems to cope with which had never arisen on the same scale in Europe before. Had they provided for the principle of Habitual Residence instead of *Indigénat* in the territories of the ex-Austro-Hungarian Empire, and had they provided for the right of option in Alsace-Lorraine, they would have contributed, from the standpoint of the Law of Nations, a decided advance upon the nationality provisions of the post-War Treaties. Even as it is, the fact alone that the present Treaties of Peace provide for the Minorities Treaties now in force might suffice to justify their existence, for nothing equal to the provisions of the existing Minorities Treaties as regards the protection of the ethnic national rights of peoples has

ever been reached under any form of international legislation during the world's history. The French Declaration of the Rights of Man has undoubtedly found expression in the provisions of these Treaties, the Lausanne Treaty always excepted; and lest some critics might hesitate to appreciate the high character of their purpose, we would refer them to the letter addressed on June 24, 1919, by the President of the Versailles Peace Conference, M. Clemenceau, to M. Paderewski (see Annex, p. 263). And it should be noted that four out of the five States that were required to sign Treaties placing their minorities populations under League of Nations guarantee, were States particularly attached to France, namely, Poland, Czechoslovakia, Rumania, and Jugoslavia. If the major number of nationality controversies leading to statelessness have arisen in these territories, this is not so much due to their supposedly unreasonable frontier lines as to the fact that they are all Successor States of the Austro-Hungarian Empire, and as such suffer from the cancer of *indigénat*. If this were not true, one would be forced to conclude that the Italian frontier line with Austria was unreasonable also.

Italy in 1922 took the initiative for the settlement of nationality problems arising out of the Peace Treaties between the Successor States of the Austro-Hungarian Empire through the Conference convened at Rome. Both she and Austria ratified the Rome Convention two years later, but as yet the Convention is not in force as between her and Yugoslavia, for example. Had these two States

ratified the Convention, it is likely that their present relations would be less strained than they are.

Unfortunately, behind the scenes of what should have been—in the absence of Allied unity—a pure question of interstate and international jurisprudence, several forces of a strictly political character have been and are at work which have rendered and still render ineffective almost every attempt made to apply the provisions of the Peace and Minorities Treaties with any degree of exactitude. Certain States, failing to realize the legally interdependent character of these two sets of Treaties, have striven to separate the one from the other. Rumania is conspicuous among these States. Other States, whilst insisting on the strict application by their neighbours of their Minorities Treaties and obligations, demand a revision of the Peace Treaties from which the Minorities Treaties immediately derive. Germany has for some years been foremost amongst these States.

Indeed, it is impossible to understand the post-War nationality problem aright without taking Germany's foreign policy in Central Europe into serious account. The original admission of Germany into the League of Nations was generally hailed as constituting, amongst other things, a final guarantee that the Minorities Treaties would be enforced to the letter. For surely Germany would see to it that the six million-odd German minorities outside her borders would benefit by the application of the Treaty clauses. The moral effect of Germany's presence on the League's Council proved at one time to be such indeed that certain favourable alterations were made to the Council's minorities procedure despite the

reluctance of certain interested States to accept them. Germany, even during the Peace Treaty negotiations at Versailles and earlier at the Berlin Congress (see Annex, Prince Bismarck's words), had posed as a protector *par excellence* of the rights of minorities—to such a degree, in fact, that she was not required by the Allied Powers to sign a Minorities Treaty. The Allied Statesmen, including Clemenceau, had taken her at her word, and had only exacted the signing of Minorities Treaties from such States as Poland and the Little Entente. Eventually, as a Permanent Member of the League's Council, Germany participated prominently in the work of Council Committees entrusted with the examination and settlement of petitions received from racial, linguistic, and religious minorities. Several of these complaints referred to nationality and several related to ill-treatment of Jews. In 1933, however, with the advent of the Third Reich, a Jewish problem arose in Germany itself. A ruthless oppression of Jews in Germany followed. German delegates serving on League Council Committees who had insisted, for example, on the meting out of justice to Jews under the Minorities Treaties in such States as Rumania, etc., must have found it increasingly difficult to justify the illegal proceedings perpetrated in their own country, proceedings which would never have been permitted had the Allied Powers at Versailles not taken Germany at her word, but had exacted from her a signature to a Minorities Treaty similar to that signed by Poland. Germany has now withdrawn from the League of Nations. And the number of German refugees—including a considerable percentage of stateless persons—may now be

fixed approximately at some sixty thousand. Yet these sixty thousand can scarcely be held to be victims of the Treaties of Peace. And where are the Bavarians and the German Catholic party? These are not surely the victims of the Treaties. And there remains the Saar plebiscite of 1935.

In the circumstances we can only regret that the Allied Powers did not induce Germany to sign a Minorities Treaty at Versailles.

The fact remains, however, that the Minorities Treaties derive direct from the Peace Treaties, and that these two sets of Treaties are therefore inseparable. It is these very political intrigues, inevitably connected with questions of nationality, ethnic and legal, that have rendered so difficult the task of the League of Nations. And seeing that the League's Council has no authority under the Treaties to negotiate with more than one State at a time under its minorities procedure, it is not likely that an individual Member of the Council would raise the general question of nationality in the recovered or acquired territories of post-War Europe as long as the political issues have predominance over the legal. The legal issues are thus condemned to suffer in very much the same way as do the economic and disarmament.

It is therefore impossible to envisage for the present any effective relief being given to the existing nationality situation through the operation of the Peace and Minorities Treaties alone. It is sufficient to examine the Minutes of the Hague Conferences for the Progressive Codification of International Law, convened up to 1930 by the League of Nations, to conclude that in this field also the political exigencies are paramount. Benevolent

recommendations are not lacking, and the last Conference held in 1930 even urged upon the League the necessity of grappling with the problem of statelessness. The League's Council definitely shared the opinions put forward by the Conference, but, despite this, four years have elapsed and the question has not yet been raised in the Assembly. Upon consulting responsible persons on the subject in Geneva, we have been told that the present circumstances are unfavourable to the holding of international conferences, and that the further convening of a Codification Conference at this juncture is not at all probable.

M. Politis believes, however, that the time will come when stateless persons and members of racial, linguistic, and religious minorities may directly approach the Permanent Court at The Hague for protection. This remarkable Greek protagonist of Justice, in a speech delivered recently (February 1934) before the "Defence of Peace" Congress at Brussels, explains that the present lack of provision for individuals to approach the Court is all the more deplorable "qu'il y a aujourd'hui un nombre considérable d'individus sans nationalité et qui, par ce fait, ne peuvent, pour la sauvegarde de leurs droits, obtenir la protection d'aucun Gouvernement." He adds that "la protection des minorités a toujours un certain caractère politique. Il conviendrait de substituer à cette protection politique la protection juridictionnelle de la Cour, et d'étendre cette protection des minorités à l'homme en cette seule qualité. La conséquence en serait," he concludes, "que la justice cesserait d'être, en cette matière, en conflit avec la politique."

But no effective steps have been taken hitherto to approach the problems of statelessness and double nationality as these arise out of the Treaties of Peace. The admirable efforts made by such bodies as the International Federation of League of Nations Societies, starting with the Minorities Treaties, are now being inevitably led on to more general and platonic lines in the knowledge that the political susceptibilities of the parties to the Treaties may at no cost be aroused. Whilst the British League of Nations Union, the Austrian League of Nations Society, and the Save the Children Fund are now engaged in studying the means and ways whereby the position of children left stateless owing to conflicts of Treaties may be alleviated, and whilst praiseworthy efforts are being made to extend the Convention adopted under the Nansen Scheme on October 28, 1933, to *all* stateless refugees, the problems presented by the nationality provisions of the Peace and Minorities Treaties still in force today remain as yet unsolved. Thousands upon thousands of persons who should long ago have acquired a nationality *ipso facto* have, through their non-acquisition of that nationality, lost their rights to pensions payments, and have been compelled to leave their children to the care of a handful of benevolent societies already hard pressed for funds.

And in the meantime the Treaties themselves continue to be abused. Where they have been effectively applied, the results as regards nationality have been fairly often satisfactory; where they have been abused or deliberately misinterpreted, the results have almost always been calamitous. In many cases it has been the

States which might have benefited most from their provisions that have been foremost in violating the Treaty clauses.

The extent to which the question of the existing European frontiers is related to that of the nationality problem is being determined by political forces. Both Ethnic and Legal Nationality consciousness are wide awake at present. The tendency at one stage—the Briand–Stresemann stage—towards a certain growth in the spirit of internationalism has been sadly and most markedly checked. It might be said, perhaps, that the Nationality Conception feels that it stands in danger of some Unknown Forces which may sweep away the frontiers and do away with nations as we know them. It is certain that the Poles, the Czechs, and other races liberated under the Peace Treaties are determined to retain the freedom that they have secured. It is equally certain that in the name of Nationality there are States which now openly champion the cause of the races condemned to the rank of minorities by the Treaties, whilst oppressing their own racial minorities at the same time. And from an exaggerated Nationality Conception it is but a step to augmented customs tariffs and increased armaments. . . .

It may be that the stateless person of today is in a sense a precursor of the time to come, in which there will be no national distinctions and in which everyone will be stateless—a time when it will no longer be necessary to possess a passport, to be unemployed, and to be tried in a Court in a foreign tongue—a time when there will be no interstate conflicts, no armaments or disarma-

ments, and, in consequence, no Peace Treaties, Interstate Conventions or State Laws and Decrees regarding nationality.

But in the present state of things it is necessary to possess a nationality, if only to be able to live and move. Unfortunately, his right to a passport is today man's richest possession. Treaties are likely to be concluded again, and for this reason we would do well to do all that lies within our power to hasten the work already begun by the Hague Conferences for the Codification of International Law, so that, when the time comes, the drafters of such Treaties would be in possession of a fixed code of principles governing acquisition and loss of nationality, calculated to avoid the mistakes of the past, involving the distress of hundreds of thousands, to secure the populations concerned against unmerited injustice, and to ward off the dangerous caprices attending Treaty Revision.

As regards the number of stateless persons, this continues to be unwarrantably high. The number of political refugees from various systems of government is increasing daily, and most of these refugees are, to all intents and purposes, stateless. In several quarters of the globe it is enough to hold an opinion of one's own to be deprived of nationality without warning. In the ranks of the new stateless there are many "thinking men" who have not the happier fortune to belong to a minority placed by virtue of the Treaties under some degree of international protection in accordance with the French principle of the Rights of Man.

The existing Peace Treaties—that of Lausanne always

excepted—possess their virtues, and amongst the foremost of these stand their provisions for the conclusion of the Minorities Treaties. The nationality clauses of the Minorities Treaties complete the nationality provisions of the Peace Treaties where these relate to the territories of Central Europe and the Balkans. Their only serious flaw lies in the substituting of the principle of *Indigénat* for that of Habitual Residence in certain quarters of the ex-Austro-Hungarian Empire. And this mistake was not intentional. With a minimum of good will it could have been remedied by the Successor States in conference on the basis of the Rome Convention. Similarly with regard to option delays; these could have been extended by agreement. No Treaty text is entirely invulnerable, and no Treaty clause exists which is not open to interpretation.

Had the Treaty Signatories not relieved themselves too soon of an obvious responsibility and embarked each upon the policy of his own fancy, we believe that much unnecessary distress would have been avoided. The Allies ceased far too early to be all but Allies in name. And the League of Nations was denied the necessary authority to carry out to the full the responsibilities which it had perforce to shoulder. It is not unlikely that these remarks, applied to the nationality problem, might be applicable also to the economic and disarmament issues of the Peace Treaties.

As to Revision, we believe that any fundamental Revision of the present Treaties of Peace would lead inevitably to the collapse of the Minorities Treaties, and if these, together with certain justified ethnic claims that

have led to new State formations, were to be overthrown, it might well be said that the late World War had been fought in vain.

*Begun at*

"LES RIVES DE PRANGINS," NYON, 1933

*Ended at*

CAGNES-SUR-MER, A.-M., 1934

# ANNEX

*Translation (Extracts).*

## LETTER ADDRESSED TO M. PADEREWSKI BY THE PRESIDENT OF THE PEACE CONFERENCE

PARIS
*June* 24, 1919

SIR,

On behalf of the Supreme Council of the Principal Allied and Associated Powers, I have the honour to communicate to you herewith in its final form the text of the Treaty which, in accordance with Article 93 of the Treaty of Peace with Germany, Poland will be asked to sign on the occasion of the confirmation of her recognition as an independent State, and of the transference to her of the territories included in the former German Empire which are assigned to her by the said Treaty. The principal provisions were communicated to the Polish Delegation in Paris in May last, and were subsequently communicated direct to the Polish Government through the French Minister at Warsaw. The Council have since had the advantage of the suggestions which you were good enough to convey to them in your memorandum of June 16th, and, as the result of a study of these suggestions, modifications have been introduced in the text of the Treaty. The Council believe that it will be found that by these modifications the principal points to which attention was drawn in your memorandum have, in so far as they relate to specific provisions of the Treaty, been adequately covered.

In formally communicating to you the final decision of the Principal Allied and Associated Powers in this matter, I should desire to take this opportunity of explaining in a more formal manner than has hitherto been done the considerations by which the Principal Allied and Associated Powers have been guided in dealing with the question.

1. In the first place, I would point out that this Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received the most explicit sanction when, at the last great assembly of European Powers—the Congress of Berlin—the sovereignty and independence of Serbia, Montenegro, and Rumania were recognized. It is desirable to recall the words used on this occasion by the British, French, Italian, and German Plenipotentiaries, as recorded in the Protocol of June 28, 1878:

> "Lord Salisbury recognizes the independence of Serbia, but is of opinion that it would be desirable to stipulate in the Principality the great principle of religious liberty.
>
> . . . . . .
>
> "M. Waddington believes that it is important to take advantage of this solemn opportunity to cause the principles of religious liberty to be affirmed by the representatives of Europe. His Excellency adds that Serbia, who claims to enter the European family on the same basis as other States, must previously recognize the principles which are the basis of social organization in all States of Europe, and accept them as a necessary condition of the favour which she asks for.
>
> . . . . . .
>
> "Prince Bismarck, associating himself with the French proposal, declares that the assent of Germany is always assured to any motion favourable to religious liberty.
>
> "Count de Launay says that, in the name of Italy, he desires to adhere to the principle of religious liberty,

which forms one of the essential bases of the institutions in his country, and that he associates himself with the declarations made on this subject by Germany, France, and Great Britain.

"Count Andrassy expresses himself to the same effect, and the Ottoman Plenipotentiaries raise no objection.

"Prince Bismarck, after having summed up the results of the vote, declares that Germany admits the independence of Serbia, but on condition that religious liberty will be recognized in the Principality. His Serene Highness adds that the Drafting Committee, when they formulate this decision, will affirm the connexion established by the Conference between the proclamation of Serbian independence and the recognition of religious liberty."

2. The Principal Allied and Associated Powers are of opinion that they would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition. In this connexion I must also recall to your consideration the fact that it is to the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence. It is by their decision that Polish sovereignty is being re-established over the territories in question, and that the inhabitants of these territories are being incorporated in the Polish nation. It is on the support which the resources of these Powers will afford to the League of Nations that for the future Poland will to a large extent depend for the secure possession of these territories. There rests, therefore, upon these Powers an obligation, which they cannot evade, to secure in the most permanent and solemn form guarantees for certain essential rights which will afford to the inhabitants the necessary protection whatever changes may take place in the internal constitution of the Polish State.

It is in accordance with this obligation that Clause 93 was inserted in the Treaty of Peace with Germany. This clause

relates only to Poland, but a similar clause applies the same principles to Czechoslovakia, and other clauses have been inserted in the Treaty of Peace with Austria, and will be inserted in those with Hungary and with Bulgaria, under which similar obligations will be undertaken by other States, which under those Treaties receive large accessions of territory.

The consideration of these facts will be sufficient to show that by the requirement addressed to Poland at the time when it receives in the most solemn manner the joint recognition of the re-establishment of its sovereignty and independence, and when large accessions of territory are being assigned to it, no doubt is thrown upon the sincerity of the desire of the Polish Government and the Polish nation to maintain the general principles of justice and liberty. Any such doubt would be far from the intention of the Principal Allied and Associated Powers.

3. It is indeed true that the new Treaty differs in form from earlier Conventions dealing with similar matters. The change of form is a necessary consequence and an essential part of the new system of international relations which is now being built up by the establishment of the League of Nations. Under the older system the guarantee for the execution of similar provisions was vested in the Great Powers. Experience has shown that this was in practice ineffective, and it was also open to the criticism that it might give to the Great Powers, either individually or in combination, a right to interfere in the internal constitution of the States affected which could be used for political purposes. Under the new system the guarantee is entrusted to the League of Nations. The clauses dealing with this guarantee have been carefully drafted so as to make it clear that Poland will not be in any way under the tutelage of those Powers who are signatories to the Treaty.

I should desire, moreover, to point out to you that provision has been inserted in the Treaty by which disputes arising out of its provisions may be brought before the Court

of the League of Nations. In this way differences which might arise will be removed from the political sphere and placed in the hands of a judicial Court, and it is hoped that thereby an impartial decision will be facilitated, while at the same time any danger of political interference by the Powers in the internal affairs of Poland will be avoided.

4. The particular provisions to which Poland and the other States will be asked to adhere differ to some extent from those which were imposed on the new States at the Congress of Berlin. But the obligations imposed upon new States seeking recognition have at all times varied with the particular circumstances. The Kingdom of the United Netherlands in 1814 formally undertook precise obligations with regard to the Belgian provinces at that time annexed to the Kingdom which formed an important restriction on the unlimited exercise of its sovereignty. It was determined at the establishment of the Kingdom of Greece that the government of that State should take a particular form, viz., it should be both monarchial and constitutional; when Thessaly was annexed to Greece, it was stipulated that the lives, property, honour, religion, and customs of those of the inhabitants of the localities ceded to Greece who remained under the Hellenic administration should be scrupulously respected, and that they should enjoy exactly the same civil and political rights as Hellenic subjects of origin. In addition, very precise stipulations were inserted safeguarding the interests of the Mohammedan population of these territories.

The situation with which the Powers have now to deal is new, and experience has shown that new provisions are necessary. The territories now being transferred both to Poland and to other States inevitably include a large population speaking languages and belonging to races different from that of the people with whom they will be incorporated. Unfortunately, the races have been estranged by long years of bitter hostility. It is believed that these populations will be more easily reconciled to their new position if they know that

from the very beginning they have assured protection and adequate guarantees against any danger of unjust treatment or oppression. The very knowledge that these guarantees exist will, it is hoped, materially help the reconciliation which all desire, and will indeed do much to prevent the necessity of its enforcement.

5. To turn to the individual clauses of the present Treaty, Article 2 guarantees to all inhabitants those elementary rights which are, as a matter of fact, secured in every civilized State. *Clauses 3 to 6 are designed to insure that all the genuine residents in the territories now transferred to Polish sovereignty shall in fact be assured of the full privileges of citizenship.*[1] . . .

6. . . .

7. . . .

In conclusion, I am to express to you on behalf of the Allied and Associated Powers the very sincere satisfaction which they feel at the re-establishment of Poland as an independent State. . . .

The Treaty by which Poland solemnly declares before the world her determination to maintain the principles of justice, liberty, and toleration, which were the guiding spirit of the ancient Kingdom of Poland, and also receives in its most explicit and binding form the confirmation of her restoration to the family of independent nations, will be signed by Poland and by the Principal Allied and Associated Powers on the occasion of, and at the same time as, the signature of the Treaty of Peace with Germany.

(*Signed*) CLEMENCEAU.

[1] Words in italics by the Author.

# INDEX


GEORGE ALLEN & UNWIN LTD
LONDON: 40 MUSEUM STREET, W.C.1
LEIPZIG: (F. VOLCKMAR) HOSPITALSTR. 10
CAPE TOWN: 73 ST. GEORGE'S STREET
TORONTO: 91 WELLINGTON STREET, WEST
BOMBAY: 15 GRAHAM ROAD, BALLARD ESTATE
WELLINGTON, N.Z.: 8 KINGS CRESCENT, LOWER HUTT
SYDNEY, N.S.W.: AUSTRALIA HOUSE, WYNYARD SQUARE